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BEFORE THE  
  
ILLINOIS COMMERCE COMMISSION  
  
IN THE MATTER OF: )  
  
 )  
  
COMMONWEALTH EDISON RATE CASE, No. 05-0597  
  
Proposed General increase in  
  
rates for delivery service  
  
(Tariffs filed on August 31,  
2005.)

Chicago, Illinois  
March 28, 2006  
  
Met, pursuant to notice, at 9:00 a.m.  
  
BEFORE:  
MR. GLENNON DOLAN and MS. KATINA HALOULOS,  
Administrative Law Judges

APPEARANCES:  
  
MR. RICHARD G. BERNET  
MS. ANASTASIA POLEK-O'BRIEN  
10 South Dearborn Street, Suite 3500  
Chicago, Illinois 60603  
Appearing for for ComEd;

1 APPEARANCES (Continued)

2 MR. RICHARD C. BALOUGH  
3 53 W. Jackson Boulevard, Suite 956  
4 Chicago, Illinois 60604  
5 Appearing for Chicago  
6 Transit Authority;

7 MR. MARK KAMINSKI  
8 AND MR. RISHI GARG  
9 100 W. Randolph Street  
10 Chicago, Illinois 60601  
11 Appearing for The People  
12 of the State of Illinois;

13 DLA PIPER RUDNICK GRAY CARY US, LLP  
14 MR. CHRISTOPHER J. TOWNSEND  
15 MR. WILLIAM A. BORDERS  
16 203 N. LaSalle Street, Suite 1900  
17 Chicago, Illinois 60601  
18 Appearing for The Coalition of  
19 Energy Suppliers  
20 (Direct Energy Services, LLC,  
21 MidAmerican Energy Company, Peoples  
22 Energy Services Corporation, and  
US Energy Savings Corp.)

MR. RONALD D. JOLLY and  
MR. J. MARK POWELL  
30 North LaSalle Street, Suite 900  
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Appearing for the City of Chicago;

LEADERS, ROBERTSON & KONZPU, by  
MR. ERIC ROBERTSON  
Granite City, Illinois  
AND  
MR. CONRAD REDDICK  
MR. RYAN ROBERTSON  
1015 Crest Street  
Wheaton, Illinois 60188  
Appearing for IIEC;

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3 FOLEY & LARDNER, by  
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6 321 North Clark Street, Suite 2800  
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8 Appearing for ComEd;

9 MR. ALLAN GOLDENBERG  
10 MS. MARIE D. SPICUZZA  
11 Assistant State's Attorney  
12 69 West Washington, Suite 3130  
13 Chicago, Illinois 60602  
14 Appearing for Cook County  
15 State's Attorney's Office;

16 MS. CARLA SCARSELLA  
17 MR. JOHN FEELEY  
18 MR. CARMEN FOSCO  
19 MR. SEAN BRADY  
20 160 North LaSalle Street, Suite C-800  
21 Chicago, Illinois 60601  
22 Appearing for the ICC Staff.

23 SIDLEY & AUSTIN, by  
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25 One South Dearborn  
26 Chicago, Illinois  
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28 Appearing for Commonwealth Edison Company;

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1 APPEARANCES (CONTINUED)

2 GIORDANO & NEILAN, by  
3 MR. PATRICK GIORDANO  
4 MR. PAUL NEILAN  
5 MS. CHRISTINA PUSEMP  
6 360 North Michigan  
7 Chicago, Illinois 60601  
8 Appearing on behalf of of the  
9 Building Owners and Managers  
10 Association of Chicago;

11 MR. LARRY GOLLOP,  
12 1000 Independence Avenue  
13 Southwest, Washington, DC 20585  
14 for U.S. Department of Energy;

15 HINSHAW & CULBERSON, by  
16 MR. EDWARD GOWER  
17 401 South Knight, Suite 200  
18 Springfield, Illinois 61721.  
19 for Metra;

20 CITIZENS UTILITY BOARD,  
21 MR. ROBERT KELTER  
22 MS. JULIE SODERNA AND  
23 MR. MELVILLE NICKERSON  
24 208 South LaSalle, Suite 1760  
25 Chicago, Illinois 60601  
26 Appearing for CUB;

27 SONNENSCHNEIN, NATH & ROSENTHAL, by  
28 MR. JOHN ROONEY  
29 AND MR. MICHAEL GUERRA  
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33 (312) 876-8925

34 SULLIVAN REPORTING COMPANY, by  
35 Carla L. Camiliere, CSR,  
36 License No. 084-003637

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1	I N D E X				
2			Re-	Re-	By
3	Witnesses:	Direct	Cross	direct	cross Examiner
4	Alan Chalfant	1655	1657		
5			1662		1701
6	Diana Hatthorn				
7		1706	1711	1752	
8	John Dtutsman				
9		1755	1757		
10	Michael McNally				
11		1774	1783	1807	
12	Sheena Kight				
13		1809	1811		
14			1819		
15	Theresa Ebrey				
16		1851	1851		
17			1859		
18	Eric P. Schlaf, Ph.D.				
19		1915	1917		
20			1928		
21			1930		
22					

	E X H I B I T S		
	Number	For Identification	In Evidence
1			
2	IIEC		
3	#2.0,2.1,2.2,6.0 & 6.1		1657
	ComEd Cross		
4	#10	1664	1703
	#11	1674	1703
5	#12	1676	1703
	#13	1695	1703
6	ICC Staff		
	#1.0 & 12.0		1705
7	#10.0 & 10.1		1756
	#5.0 & 16.0		1773
8	ComEd Cross		
	#14	1805	1808
9	Icc		
	#4.0,4.1,4.3 & 15.0		1811
10	ComEd		
	#15	1828	
11	ICC Staff		
	# 2.0 & 13.0		1851
12	AG		
	#4	1858	
13	ICC Staff		
	#20.0		1916
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1 JUDGE DOLAN: Good morning, everybody.

2 By the power and authority of the  
3 Illinois Commerce Commission, I call Docket  
4 No. 05-0597, Commonwealth Edison Company proposed  
5 general increase of electric rates, general  
6 restructuring of rates, price unbundling of bundled  
7 service rates of revision of other terms and  
8 conditions of service.

9 Will the parties please identify  
10 themselves for the record.

11 MS. POLEK-O'BRIEN: Darryl Bradford,  
12 Richard G. Bernet and Anastasia Polek-O'Brien,  
13 appearing for Commonwealth Edison Company.

14 Also appearing for Commonwealth  
15 Edison, Mr. E. Glenn Rippie and John Ratnaswamy of  
16 the law firm of Foley and Lardner, and Dale E. Thomas  
17 for the law firm of Sidley, Austin.

18 MR. FEELEY: For the Illinois Commerce  
19 Commission, John Feeley, Carmen Fosco, Sean Brady,  
20 and Carla Scarsella, 160 North LaSalle Street, Suite  
21 C-800, Chicago, Illinois 60601.

22 MR. GOLDENBERG: Alan Goldberg and Mary D.

1 Spicuzza, Assistant State's Attorney on behalf of the  
2 Cook County State's Attorney's, 69 West Washington,  
3 Suite 3930, Chicago, Illinois 60602.

4 MR. POWELL: On behalf of the City of Chicago,  
5 J. Mark Powell and Ronald D. Jolly, 30 North LaSalle,  
6 Suite 900, Chicago, Illinois 60602.

7 MR. ROBERTSON: On behalf of the Illinois  
8 Industrial Energy Consumers, Eric Robertson, Ryan  
9 Robertson of Leaders, Robertson, and Conrad Reddick.

10 MS. SODERNA: Appearing on behalf of the  
11 Citizens Utility Board, Julie Soderna Melville  
12 Nickerson, and Robert Kelter, 208 N. LaSalle,  
13 Suite 1706, Chicago, Illinois 60604.

14 MR. GARG: Mark Kaminski and Rishi Garg, 100  
15 West Randolph Street, Chicago, Illinois 60601 on  
16 behalf of the People of the State of Illinois.

17 MR. BORDERS: William A. Borders and  
18 Christopher Townsend, Dla Piper Rudnick Gray Cary Us,  
19 LLP,  
20 203 N. LaSalle Street, Suite 1900, Chicago, Illinois  
21 60601.

22 JUDGE DOLAN: Let the record reflect no other



1 appearances.

2 We are starting with Mr. Chalfant  
3 today.

4 MR. ROBERTSON: That's correct, your Honor.

5 JUDGE DOLAN: Mr. Robertson, are we ready to  
6 proceed?

7 MR. ROBERTSON: We are.

8 We call Alan Chalfant on behalf of the  
9 Illinois Industrial Energy Consumers.

10 (Witness sworn.

11 ALAN CHALFANT,  
12 called as a witness herein, having been first duly  
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MR. ROBERTSON:

17 Q Mr. Chalfant, would you state your name  
18 please.

19 A My name is Alan Chalfant. I work for  
20 Brubaker and Associates Inc.

21 Q And are you appearing on behalf of the  
22 Illinois Industrial Energy Consumers?

1           A     Yes, I am.

2           Q     I show you now what's been previously  
3 marked IIEC 2.0, 2.1, 2.2, which purports to be your  
4 direct testimony; is that correct?

5           A     Yes, it is.

6           Q     And I show you now what has been marked has  
7 previously IIEC Exhibit 6.0 and 6.1, which purports  
8 to be your rebuttal testimony; is that correct?

9           A     That's correct.

10          MR. ROBERTSON: Your Honor, I forgot your  
11 ruling. Did you want us to move to admit after cross  
12 or before cross?

13          JUDGE DOLAN: It's only after cross with the  
14 panel testimony.

15          MR. ROBERTSON: Okay. I would move, given our  
16 shortened approach, I would move for the admission of  
17 IIEC Exhibits 2.0, 2.1, 2.2, 6.0 and 6.1.

18          JUDGE DOLAN: Any objection?

19          MR. BERNET: No objection.

20          MR. POWELL: No, your Honor.

21          JUDGE DOLAN: Then they will be admitted into  
22 the record. IIEC 2.0, 2.1, 2.2 and 6.0 and 6.1 will

1     also be admitted into the record.

2                             (Whereupon, IIEC Exhibit  
3                             Nos. 2.0, 2.1, 2.2, 6.0. And  
4                             6.1 were admitted into  
5                             evidence.)

6             MR. ROBERTSON: The witness is available for  
7 cross-examination.

8                             CROSS EXAMINATION

9                             BY

10                            MR. POWELL:

11             Q     Good morning, Mr. Chalfant.

12             A     Good morning.

13             Q     My name is Mark Powell. I represent the  
14 City of Chicago. I just have a handful of questions  
15 for you. It all relates to your rebuttal testimony.

16                            In your rebuttal testimony at Pages 7  
17 to 8, you discuss CUB, City, Cook County's Stephens,  
18 Ruback's recommendation that the Commission take  
19 class annual utilization of ComEd's distribution  
20 facilities into the account in allocating  
21 distribution demand costs; is that correct?

22             A     Yes.

1           Q     And, specifically, on Pages 7 to 8 at  
2     Lines 136 through 38, you state that if Mr. Ruback's  
3     recommendation were applied to camera stores, those  
4     stores would have to charge different amounts for the  
5     same camera based on how many pictures a customer  
6     would be taking; is that correct?

7           A     Yes.

8           Q     Would you agree that camera stores are not  
9     regulated by this Commission?

10          A     That's correct.

11          Q     Would you also agree that prices for  
12     cameras are set by market forces?

13          A     That's correct.

14          Q     ComEd's delivery service rates will be set  
15     by this Commission; is that correct?

16          A     That's correct.

17          Q     Would you agree that in allocating costs  
18     among -- distribution demand costs among ComEd's  
19     customer classes, fairness and equity and proper  
20     considerations?

21          A     I'm sorry. Could you repeat that.

22          Q     Would you agree that in allocating

1 distribution demand costs among ComEd's rate classes,  
2 fairness and equity are proper considerations?

3 A In setting ComEd's distribution rates,  
4 fairness and equity are certainly a consideration.

5 In allocating the costs, I think the  
6 primary factor is cost causation.

7 Q I would like to refer you now to your  
8 rebuttal testimony at Page 8, Lines 141 to 142.

9 Where you state that to implement  
10 Mr. Ruback's proposal to account for a class usage in  
11 allocating distribution demand costs, Mr. Ruback  
12 allocates a, quote: "Arbitrary 50 percent" close  
13 quote, of distribution demand costs based on usage;  
14 is that correct?

15 A Yes.

16 Q Have you reviewed Mr. Ruback's direct  
17 testimony in this proceeding?

18 A Yes, I have.

19 Q Isn't it true that Mr. Ruback testified in  
20 his direct testimony that although he chose to weigh  
21 demand and usage equally in his recommended class  
22 revenue allocation, the Commission has discretion to

1 assign different weighting of demand and usage?

2 A He said that, yes.

3 Q I would like to refer you now please to  
4 Page 10, Lines 198 to 200 of your rebuttal testimony.

5 A Okay.

6 Q There you state that residential bills from  
7 ComEd are based primarily on usage, quote, "Which is  
8 dramatically effected by random elements, such as  
9 weather." Close quote.

10 Did I read that correctly?

11 A Yes, you did.

12 Q Isn't it true that ComEd's billing  
13 determinants have been weather normalized?

14 A The billing determinants have, but the  
15 weather hasn't.

16 Q Isn't the purpose of weather normalization  
17 to dampen the effects on revenues of changes in the  
18 weather?

19 A It's to make sure that the rates are not  
20 set reflecting an anomaly so that on the average they  
21 would collect correct revenue.

22 Q Finally, I would like to refer you to

1 Page 8 of your rebuttal testimony on Lines 147  
2 through 49 where you state that Mr. Ruback, quote:  
3 "Provides no factual or logical  
4 support for his proposal other than his subjective  
5 concept of equity." Close quote.

6 Did I read that correctly?

7 A Yes.

8 Q Isn't it true that in his direct testimony,  
9 Mr. Ruback testified that post-restructuring ComEd  
10 will be very similar structurally to the natural gas  
11 distribution utilities regulated by the Commission?

12 A He made that statement, yes.

13 Q And Mr. Ruback further testified in his  
14 direct testimony that in every natural gas  
15 distribution utility case in the last decade, this  
16 Commission has set gas revenue requirements by  
17 reflecting both usage and demand in the allocation of  
18 distribution and demand costs; is that correct?

19 A That's also a correct statement of his  
20 testimony.

21 MR. POWELL: Thank you.

22 I have nothing further.

1 JUDGE DOLAN: Thank you.

2 Mr. Bernet?

3 MS. POLEK-O'BRIEN: CTA and CUB.

4 JUDGE DOLAN: Okay. CTA took out theirs.

5 CUB is the only one.

6 MR. NIKERSON: CUB doesn't have any cross.

7 JUDGE DOLAN: All right.

8 CROSS EXAMINATION

9 BY

10 MR. BERNET:

11 Q Good morning, Mr. Chalfant.

12 A Good morning.

13 Q My name is Richard Bernet. I represent

14 Commonwealth Edison Company. I have a few questions

15 for you.

16 In connection with your testimony in

17 this case, did you review the direct, rebuttal and

18 surrebuttal testimony of Mr. Jerry Hill.

19 A Yes.

20 Q And did you also review the direct,

21 rebuttal and surrebuttal testimony of Mr. Costello?

22 A Yes.



1           Q     And did you review the direct, rebuttal and  
2     surrebuttal testimony of Mr. DeCampli?

3           A     Very briefly.

4           Q     Okay. And do you know that in connection  
5     with Mr. DeCampli's direct testimony Exhibit 4.1 was  
6     a DVD videotape that he prepared related to this  
7     case?

8           A     Yes. I did not review that videotape.

9           Q     Okay. Do you know what the subject matter  
10    of that videotape was?

11          A     I don't recall.

12          Q     Do you agree with me that the Commission  
13    should decide this case based on the facts in  
14    evidence in this case?

15          A     Yes.

16          Q     In connection with the preparation of your  
17    testimony, you prepared work papers, didn't you?

18          A     Yes, I did.

19          Q     What is your understanding of what a work  
20    paper is supposed to represent?

21          A     Basically, the steps that you progress  
22    through in order to get to the final product.

1           Q     Would it be fair to say that your work  
2 papers contain your analysis?

3           A     Yes.

4           Q     And that's true with respect to your  
5 analysis for -- strike that.

6                     In connection with this case, you are  
7 recommending that the general intangible plant that  
8 ComEd has proposed in this case be reduced by  
9 \$441 million; is that right?

10          A     Yes.

11          Q     And you are also recommending that the  
12 administrative and general expense that ComEd is  
13 seeking to recover in this case should be reduced by  
14 \$119 million; is that right?

15          A     Yes.

16          Q     Showing you what I'm going to mark as ComEd  
17 Cross-Exhibit 10.

18                     (Whereupon, ComEd Cross Exhibit  
19                     No. 10 was marked for  
20                     identification.)

21   BY MR. BERNET:

22          Q     Do you recognize that document,

1 Mr. Chalfant?

2 A Yes.

3 Q And can you tell us what it is.

4 A That was my work paper for quantifying the  
5 amounts I proposed for administrative and general  
6 costs and general and intangible plant.

7 Q Are there any other work papers that you  
8 prepared relating to your proposed adjustment to  
9 general and intangible plant?

10 A I don't believe so.

11 Q Are there any other work papers related to  
12 your proposed adjustment to administrative and  
13 general expense?

14 A I don't believe so.

15 MR. BERNET: Did you guys get one of those?

16 JUDGE HALOULOS: No.

17 MR. BERNET: I apologize.

18 BY MR. BERNET:

19 Q Now, I would like to direct your attention  
20 to the direct testimony of Mr. DeCamp.

21 I have some extra copies.

22 And, specifically, I would like to

1 direct you to Page 18 of Mr. DeCampli's direct.

2 A Okay.

3 Q Were you aware that in connection with the  
4 rules applicable to the filing in this case that  
5 ComEd had an obligation to describe in detail its  
6 largest capital addition since its last rate case?

7 A Yes.

8 Q And that rule required ComEd to file what's  
9 known as Schedule F4.

10 Is that your understanding?

11 A Yes.

12 Q It is also your understanding that the rule  
13 that requires ComEd to make such submission is 285,  
14 Part 6100 of the Commission's rules?

15 A That's what Mr. DeCampli states. And I  
16 have no basis or second-guessing that one.

17 Q Okay. Thank you.

18 And in connection with that rule, it  
19 requires ComEd to provide information that describes  
20 each addition, the date the project started, the  
21 completion date, completion cost, the reason for the  
22 project, alternatives considered, and reasons for

1     rejecting each alternative, reports relied upon by  
2     management when deciding to pursue the rate base  
3     addition.

4                     Do you agree those are all components  
5     that ComEd has to provide?

6             A     Yes.

7             Q     Now, I would like to -- strike that.

8                     Well, would you accept that ComEd made  
9     a determination that, as set forth in Mr. DeCampli's  
10    testimony at Line 380 of his direct, that ComEd  
11    determined that every capital addition in excess of  
12    \$6.9 million, it would have to disclose all this  
13    information?

14            A     Yes.

15            Q     And now, directing your attention to  
16    Exhibit 4.3 attached to Mr. DeCampli's testimony.

17            A     What I have seems to go from 4 to 14. I  
18    have the testimony. Maybe there is another file here  
19    that has the exhibits. I don't think so.

20            Q     Bear with me for one second please.

21                     I apologize.

22                     Well, while we're looking for that, is

1     it your understanding that schedule, Attachment 4.3  
2     to Mr. DeCampli's testimony is Schedule F4 that ComEd  
3     filed in this case?

4             A     Okay.

5             Q     You reviewed that in connection with your  
6     testimony?

7             A     I did not review that, no.

8             Q     You didn't review Schedule F4 attached as  
9     Exhibit 4.3 to Mr. DeCampli's testimony?

10            A     No, I didn't.

11            Q     And I know you don't have it in front of  
12    you, but Schedule F4 lists the top 21 capital  
13    additions added to ComEd's rate base since its last  
14    rate case.

15                         And it also explains. It lists them  
16    by project name. It describes the reasons for the  
17    projects; the alternatives considered and reasons for  
18    rejecting each. And it also lists reports relied  
19    upon by management when deciding to pursue that  
20    addition.

21                         Does that refresh your recollection as  
22    to whether or not you reviewed that document?

1           A     I have not reviewed that document.

2           Q     Okay.

3           A     I reviewed the reference to it, but I have  
4 not reviewed the document.

5           Q     Okay. Now, directing your attention back  
6 to Mr. DeCampli's testimony at Page 20 and continuing  
7 through Page 36.

8                     You reviewed that section of  
9 Mr. DeCampli's testimony?

10          A     As I noted in your initial question on this  
11 series, I reviewed Mr. DeCampli's testimony fairly  
12 briefly.

13                     I spent more time on Mr. Hill's and  
14 Mr. Costello's.

15          Q     Okay. Well, would it be fair to say that  
16 your testimony contains no discussion of any of the  
17 top 10 capital additions that ComEd is seeking to  
18 incorporate in the distribution plant in this case?

19          A     That would be accurate.

20          Q     Okay. And then Mr. DeCampli also describes  
21 at Page 37, he begins describing the top 11 major  
22 capital projects that ComEd has constructed since the

1 last rate case relating to general and intangible  
2 plant.

3 You didn't review that either?

4 A I reviewed it briefly. I did not analyze  
5 it in any detail.

6 Q Okay. So would it be fair to say that you  
7 make no recommendations concerning whether or not any  
8 of those 21 projects are used and useful?

9 A I did not make analysis of each of the  
10 plant additions individually, that's correct.

11 Q And you did not make a determination that  
12 any of those investments are not used and useful in  
13 serving customers; isn't that right?

14 A What was your last couple words there?

15 Q I'll rephrase.

16 With respect to those 21 capital  
17 additions, you did not make any determination that  
18 those investments are not used and useful; isn't that  
19 right?

20 A That's correct.

21 Q You also didn't make any determination that  
22 those 21 projects were not prudent for ComEd to



1 incur?

2 A That's correct.

3 However, had I done so, the focus  
4 would have only been on 11 that are involved in  
5 general and intangible, not involving the full 21.

6 Q Right. You didn't make that determination,  
7 correct?

8 A That's correct.

9 Q And you didn't make any specific  
10 determination that ComEd incurred unreasonable costs  
11 associated with those 21 projects; isn't that right?

12 A As associated with individual projects,  
13 that's right.

14 Q I know you testified about Schedule F4, but  
15 I just wanted to make sure that we're on the same  
16 page here. I would like to show you Exhibit 4.3 just  
17 so you have it, so I'll give you my copy.

18 MR. BERNET: Do you guys have that Exhibit 4.3,  
19 it's attached to his testimony?

20 JUDGE DOLAN: This?

21 MR. BERNET: Mr. DeCamp's.

22 JUDGE DOLAN: I don't have it with me.

1                   That's all right.

2       BY MR. BERNET:

3           Q     Mr. Chalfant, directing your attention to  
4       Column G there, you see that's a list of reports  
5       relied upon by management in deciding whether or not  
6       to move forward with those specific investments?

7           A     Yes, it's a summary of that.

8           Q     In connection with the preparation of your  
9       testimony, do you recall reviewing any of those  
10      reports?

11          A     No, I did not.

12          Q     Now, did you have occasion review any of  
13      the work papers that were attached to Mr. DeCamplici --  
14      or that were provided in connection with  
15      Mr. DeCamplici's direct testimony?

16          A     No, I didn't.

17          Q     In connection with the preparation of your  
18      testimony, did you submit data requests to  
19      Commonwealth Edison Company?

20          A     IIEC submitted data requests.

21                   I believe that in that would have -- I  
22      personally did not submit any on the subject of A&G

1 expenses or general intangible plants. I found most  
2 of what was helpful to me in the form of data  
3 responses and in response to Mr. Lazare.

4 Q Did you submit -- you didn't submit any  
5 data requests to ComEd in connection with any other  
6 portion of your testimony?

7 A I'm trying to recall.

8 I believe I did on the subject of the  
9 cost-of-service study.

10 Q Okay. So in connection with your review of  
11 Mr. DeCampli's testimony, you didn't submit any data  
12 request to ComEd relating to the top ten distribution  
13 plant capital additions that ComEd has added since  
14 the last rate case?

15 A No, I didn't.

16 Q And in connection with your review of  
17 Mr. DeCampli's testimony, and in particular the 11  
18 general intangible plant projects that ComEd has  
19 constructed since the last rate case, you didn't send  
20 any data requests to ComEd related to those projects  
21 either; isn't that right?

22 A That's correct.

1           Q     Handing you what I'm marking now as ComEd  
2     Cross-Exhibit 11.

3                                 (Whereupon, ComEd Cross-Exhibit  
4                                 No. 11 was marked for  
5                                 identification.)

6     BY MR. BERNET:

7           Q     For the record, that is a letter dated  
8     November 15, 2005 from Cynthia Fonner to the parties  
9     on the service list in this case. It's a two-page  
10    letter, and attached to the letter is an e-mail from  
11    Ellen Glen to a number of parties which I would  
12    represent to you were the parties on the service list  
13    as of November 15, 2005.

14                               And do you see that Mr. Robertson is  
15    identified as one of the recipients of the e-mail.

16           MR. ROBERTSON:   We'll stipulate that I was one  
17    of the recipients.

18     BY MR. BERNET:

19           Q     And one of the things that this letter  
20    describes is in the second paragraph that ComEd had  
21    established data rooms containing information  
22    relative to the case.

1 Do you see that?

2 A Yes, I do.

3 Q And the letter goes on to say that in  
4 connection with the data rooms that ComEd established  
5 there were reports prepared by the Power Delivery  
6 Research and Consulting Corporation relating to each  
7 of the capital projects identified on Schedule F4.

8 Do you see that?

9 A Yes, I do.

10 Q Do you know the data rooms contain  
11 approximately 25,000 pages of materials relative to  
12 this case?

13 A I accept that, and probably no Windows  
14 also.

15 Q No, there were Windows.

16 Did you review in connection with the  
17 preparation of your testimony the 20 volumes of  
18 reports prepared by the Power of Delivery Research  
19 Consulting Corporation on behalf of ComEd?

20 A No, I didn't.

21 Q And you didn't visit the data room either,  
22 did you?

1           A     No.

2           Q     Are you familiar with what is known as the  
3   FERC Form 1?

4           A     Yes.

5           Q     I'm going to hand you now what I will mark  
6   as ComEd Cross-Exhibit 12.

7                               (Whereupon, ComEd Cross Exhibit  
8                               No. 12 was marked for  
9                               identification.)

10   BY MR. BERNET:

11          Q     For the record, that is a copy of the cover  
12   page and Pages 204 through 207 of ComEd's 2004 FERC  
13   Form 1.

14                               Would you accept that?

15          A     Yes.

16          Q     And ComEd prepares the FERC Form 1 annually  
17   and submits that to FERC?

18          A     That's correct.

19          Q     ComEd also files a similar document,  
20   Form 21. You are familiar with that?

21          A     Generally, yes.

22          Q     And what this document does is -- it

1 identifies various classes of distribution plant and  
2 expenses. Is that your understanding?

3 A Well, it does a whole lot more than that.

4 Q Sure.

5 A But the pages you supplied to me, that's  
6 what they do, that's correct.

7 Q Okay. And I would like to direct your  
8 attention to Page 206 of that document. And in  
9 particular, Lines 77 through 86.

10 A I'm there.

11 Q Okay. And is it your understanding that  
12 those accounts are the accounts that are included in  
13 ComEd's general plant?

14 A Yes.

15 Q And Account 389 is land and land rights.

16 Do you see that?

17 A Yes.

18 Q Can you describe what might be included in  
19 that balance?

20 A Land.

21 Q Leases, land?

22 A Related property.

1           Q     And the Account 390, which is on Line 78,  
2     it's called Structures and Improvements. What would  
3     you expect to be found in that category?

4           A     Primarily buildings.

5           Q     Then Line 79 is office furniture and  
6     equipment. Line 80 is transportation equipment;  
7     ComEd's fleet of trucks would be in that category.  
8     Wouldn't you expect that?

9           A     Trucks, airplanes, what have you.

10          Q     In Line 81 is stores equipment. What would  
11     you expect to be included in that account?

12          A     I haven't reviewed the description of the  
13     accounts, so I'm not sure.

14          Q     The other accounts that are listed there  
15     are tools, shop and garage equipment, that's  
16     Line 82, laboratory equipment, power equipment,  
17     communication equipment, miscellaneous equipment.

18                     Do you see all that?

19          A     Yes.

20          Q     And would you agree with me that the  
21     collective balance of those accounts as of 12/31/2004  
22     was over \$1 billion?



1           A     Was how much?

2           Q     Over 1 billion.

3           A     Yes.

4           Q     Your testimony contains no specific  
5 discussion of any of those accounts; is that correct?

6           A     Of any of those accounts? That's correct.  
7 It doesn't.

8                     I think it's important to note that  
9 these are simply the costs that ComEd reports to FERC  
10 for that year. They're not necessarily costs that  
11 have been approved by the Commission.

12          Q     Approved by what Commission?

13          A     The Illinois Commerce Commission.

14          Q     Understood.

15                    But your answer to that question was,  
16 you have not made any specific recommendation  
17 concerning any of those balances; is that correct?

18          A     That's correct.

19          Q     Okay. And you also haven't made any  
20 specific determination concerning the underlying  
21 assets that would be found in those account balances;  
22 isn't that right?

1           A     That's correct.

2           Q     And you didn't send any data requests to  
3     ComEd concerning any of those accounts; isn't that  
4     right?

5           A     That's correct.

6           Q     And you made no determination that the  
7     balances -- strike that.

8                     I would like to direct your attention  
9     to Mr. Hill's testimony for a moment please.

10                    And in particular, it's ComEd  
11     Exhibit 19, Schedule 5.

12          A     Exhibit 19, what?

13          Q     Schedule 5.

14          A     No schedule is attached.

15          Q     You reviewed Mr. Hill's testimony including  
16     the schedules, didn't you?

17          A     Yes.

18          Q     That includes his rebuttal testimony?

19          A     Yes.

20          Q     Schedule 5 is a list of estimated  
21     depreciable lives of general and intangible plant.

22                    I'm not going to ask you about the

1 depreciation. I'm just going to ask you about what  
2 appears on Lines 15 through 22 of that schedule, and  
3 it's various computer software; a Cegis design tool.  
4 You would expect that to be found in an intangible  
5 plant, wouldn't you?

6 A The what?

7 Q It's called Cegis design tool.

8 A Yes.

9 Q Let me ask it this way: In connection with  
10 the preparation of your testimony, did you review any  
11 specific intangible plant that ComEd is seeking to  
12 recover in this case?

13 A No.

14 Q And you didn't conclude that any intangible  
15 plant is not used and useful in serving customers in  
16 ComEd's service territory; is that right?

17 A I didn't what?

18 Q You didn't conclude that any of ComEd's  
19 intangible plant is not used and useful?

20 A That's correct.

21 I thought you said "include" not  
22 "conclude."

1           Q     No problem.

2                     And you didn't conclude that any of  
3     the investment ComEd made in any of its intangible  
4     plant was imprudent; isn't that right?

5           A     That's correct.

6           Q     And you didn't conclude that any of the  
7     money that ComEd invested in intangible plant  
8     projects was unreasonably high?

9           A     That's correct.

10          Q     And it's true that the basis of your  
11     disallowance for ComEd's general and intangible plant  
12     is that ComEd has not adequately presented a valid  
13     reason for the increase in net general and intangible  
14     plant; is that right?

15          A     It's -- first, that there was a very  
16     significant increase.

17                     And, secondly, they do not explain a  
18     good reason for it. That's correct.

19          Q     Now, you determined that general and  
20     intangible plant since the -- strike that.

21                     You made a determination that ComEd's  
22     general plant between its last rate case and now had

1       increased by 24.8 percent; isn't that right?

2           A     I believe that's correct.

3           Q     And it's your conclusion that ComEd's  
4       general intangible plant should not have exceeded  
5       that rate of increase; isn't that true?

6           A     Yes.

7                       Excuse me.   If we could go back.

8           Q     Okay.

9           A     Did you ask me in the prior question if the  
10       distribution plant increased by 24.8 percent?

11          Q     Yes.

12          A     Okay.   I agree with that, yes.

13          Q     Thank you for that clarification.

14                       So you concluded that the increase in  
15       ComEd's distribution plant was appropriate in this  
16       case; is that right?

17          A     I didn't address the appropriateness of the  
18       total distribution plant.   I accepted that and used  
19       that as a majoring device as to what would be a  
20       reasonable expected increase in the general,  
21       intangible plant.

22          Q     So you accepted what ComEd said with

1     respect to distribution plant?

2             A     That's correct.

3             Q     Okay. And in terms of evaluating what you  
4     think is an appropriate increase in general and  
5     intangible plant, you did no comparison between  
6     general plant and distribution plant; isn't that  
7     right?

8             A     That's correct. I treated the two as a  
9     whole.

10            Q     And so you did no independent analysis of  
11    whether an increase in intangible plant compared to  
12    distribution plant was appropriate, right?

13            A     That's correct.

14            Q     Okay. Now, you understand that ComEd's  
15    last rate case was ICC Docket 01-0423?

16            A     Yes.

17            Q     And that was filed in 2001, that case?

18            A     Yes, with a 2000-test year, I believe.

19            Q     You testified in that case, didn't you?

20            A     Yes.

21            Q     You made a recommendation to the Commission  
22    that ComEd's general intangible plant balance should

1 be reduced, didn't you?

2 A Yes, I did.

3 Q And the basis for that recommendation was  
4 not that general and intangible plant should only  
5 increase at the same rate that distribution plant  
6 increases, right?

7 A That was not my proposal in that case,  
8 that's correct.

9 Q And do you know whether or not ComEd had a  
10 prior delivery services rate case prior to the 2001  
11 case?

12 A I believe they did.

13 I don't remember when we switched from  
14 regular rate cases to delivery services.

15 Q Would you accept, subject to check, that it  
16 was 1999?

17 A Okay.

18 Q So when you testified in the 2001 case, you  
19 didn't evaluate ComEd's general and intangible plant  
20 compared to what it had been in the 1999 case, did  
21 you?

22 A No, I didn't.

1                   Well, I did, but I did not make that a  
2   part of my proposal in that case.

3           Q     And you didn't evaluate the rate of  
4   increase of distribution plant between the 1999 case  
5   and the 2001 case to make your recommendation; isn't  
6   that right?

7           A     That's correct.

8           Q     And the Commerce Commission ultimately  
9   issued an order in that case, didn't it?

10          A     Yes, it did.

11          Q     The Commission didn't determine that the  
12   appropriate level of general and intangible plant was  
13   directly tied to any distribution plant balance  
14   increase, did it?

15          A     Not in that case, no.

16          Q     How many cases would you say, regulatory  
17   cases, would you say you testified in in your career,  
18   just ballpark?

19          A     400.

20          Q     And out of those, how many would you say  
21   were rate cases?

22          A     At least 300.



1           Q     And in none of those cases have you  
2     proposed or supported an adjustment to general and  
3     intangible plant in order to maintain a fixed  
4     proportional relationship between general and  
5     intangible plant balances and distribution plant  
6     balances, right?

7           A     That's correct.

8                     It's only become a relevant issue  
9     since we reached the point where utilities are  
10    transitional from vertically integrated utilities to  
11    distribution only utilities.

12           MR. BERNET:   I move to strike.

13                     That answer was a yes-or-no.

14           JUDGE DOLAN:   Sustained.

15    BY MR. BERNET:

16           Q     So let me ask that question one more time.

17                     In none of those cases, have you  
18    proposed or supported an adjustment to general and  
19    intangible plant in order to maintain a fixed  
20    proportional relationship between general and  
21    intangible plant balances and distribution plant  
22    balances, correct?

1           A     Correct.

2           Q     To your knowledge, has the Illinois  
3     Commerce Commission ever made an adjustment to a  
4     Utility's general and intangible plant solely on the  
5     basis of the theory you recommend here?

6           A     Yes.

7           Q     In connection with your -- strike that.

8                     You don't cite any economic literature  
9     that support the conclusion that electric utility  
10    general and intangible plant spending should increase  
11    at precisely the same rate as distribution plant  
12    spending, right?

13          A     That's correct.

14          Q     And you don't cite any empirical or  
15    industry analysis to support that theory either;  
16    isn't that right?

17          A     That's correct.

18          Q     Okay. Now, I would like to direct your  
19    attention to your direct testimony at Page 6.

20                     Are you there?

21          A     Yes.

22          Q     Your recommendation to reduce ComEd's

1 administrative and general expense is based upon what  
2 you believe to be an appropriate percentage of  
3 ComEd's nonA&G, O&M costs, right?

4 A It's based on the approved percentage from  
5 the last proceeding.

6 Q And by that, you mean the 2001, 0423 rate  
7 case, right?

8 A That's correct.

9 Q And when we say "O&M," you understand me to  
10 mean operation and maintenance expenses, right?

11 A That's correct.

12 Q So it's your conclusion that ComEd's A&G  
13 expenses in this case should be capped at precisely  
14 35.8 expense of O&M expense; isn't that right?

15 A That's correct.

16 Q You testified in that case and made a  
17 recommendation that the Commission reduce ComEd's A&G  
18 expense, didn't you?

19 A Yes, I did.

20 Q And the basis for that recommendation was  
21 not that there should be a fixed proportional  
22 relationship between A&G expense and nonA&G, O&M

1       expense; isn't that right?

2               A       That's correct.

3               Q       In fact, in none of the cases that you  
4       testified in before have you proposed or testified in  
5       support of an adjustment to A&G in order to maintain  
6       a specific fixed proportional relationship between  
7       A&G expense and nonA&G, O&M expense; isn't that  
8       right?

9               A       That's correct.

10              Q       And in your testimony, you cite no economic  
11       study to support your theory that A&G should only be  
12       allowed at a fixed percentage of O&M expense, right?

13              A       That's correct.

14              Q       And your testimony contains no discussion,  
15       analysis, or rationale as to why the relationship  
16       between A&G and O&M expense in the last DST case was  
17       the appropriate standard; isn't that right?

18              A       I believe I noted that was the appropriate  
19       standard because it's what the levels of the  
20       Commission -- based on the levels that the Commission  
21       found just and reasonable.

22              Q       Right.

1                   But the Commission, the Commission's  
2     analysis in that case did not compare A&G to nonA&G,  
3     O&M and conclude that a specific percentage was  
4     necessary; isn't that right?

5           A     That's correct.

6           Q     I would like to direct your attention to  
7     your direct testimony at Page 4, Line 66 through 70.

8                   At that point in your testimony, you  
9     identified some of the specific types of A&G  
10    expenses, right?

11          A     That's correct.

12          Q     And that's salaries of corporate officials,  
13    pensions and benefits, injuries and damages, office  
14    supplies, and miscellaneous expenses, right?

15          A     That's correct.

16          Q     And in Mr. Hill's testimony, he testifies  
17    that A&G expenses also include information  
18    technology, human resources, finance, legal, and  
19    communications.

20                   You would accept that those are also  
21    appropriate A&G expenses, correct?

22          A     At least parts of them, yes.

1           Q     And you have no reason to dispute that  
2     ComEd had A&G expenses in each of those categories in  
3     the texture of this case?

4           A     No.

5           Q     Now, you said you reviewed Mr. Costello's  
6     testimony?

7           A     Yeah.

8           Q     And you know that in 2001 ComEd  
9     restructured?

10          A     Yes.

11          Q     I'm sorry. Exelon restructured?

12          A     (Shaking head up and down.)

13          Q     That included ComEd, is that your  
14     understanding?

15          A     That's correct.

16          Q     And that many of the functions that ComEd  
17     performed in-house were transferred to its shared  
18     services company, BSC?

19          A     That's correct.

20          Q     Did you factor that into your analysis?

21          A     That fact does not change my analysis.

22          Q     But your testimony contains no discussion

1 of those facts; isn't that correct?

2 A I actually did at Page 5, Line 78  
3 through -- well, that answer in particular, I  
4 referred to the BSC in the first sentence.

5 So I did discuss that in my testimony,  
6 yes.

7 Q Okay. And that didn't effect your  
8 analysis, though; is that right?

9 A That's correct.

10 Q You didn't send ComEd any data requests  
11 concerning its specific A&G expenses in this case,  
12 did you?

13 A No, I didn't.

14 Q You don't dispute that those expenses were  
15 incurred, though, do you?

16 A No.

17 Q And you don't claim that any of those  
18 amount -- that any of the amounts spent by ComEd with  
19 respect to A&G expenses were unreasonable?

20 A Not individually only in the aggregate.

21 Q And your testimony contains no analysis or  
22 evaluation of any of the specific expenses that ComEd

1     has included in its A&G balance for recovery in this  
2     case?

3             A     That's correct.

4             Q     I would like to direct your attention to  
5     your direct testimony at Page 3 and specifically  
6     Table 1.

7             A     You're losing ground in terms of pages.

8             Q     I know.

9                     So in that table, you identify what  
10    ComEd's administrative and general expenses were when  
11    they were approved in 2000; is that right?

12            A     Yes.

13            Q     And would you agree with me that the amount  
14    of administrative and general expenses plus the  
15    amount of O&M expenses in 2000 was roughly  
16    \$670 million?

17            A     Yes.

18            Q     And that was test year 2000?

19            A     That's correct.

20            Q     And also on that, in that table, you've  
21    listed what ComEd proposed to recover in 2004 with  
22    respect to administrative and general expense and O&M



1 expense, right?

2 A Yes.

3 Q What do those two total approximately?

4 A I don't have a calculator with me.

5 That is going to be a little bit over

6 7 million.

7 Q I'm sorry.

8 How much?

9 A It will be -- well --

10 Q 707?

11 A Yes.

12 Q Would you agree with me that that's

13 approximately a 5.6 percent increase?

14 A Yes.

15 Q I'm going to mark what I've written on the

16 board as ComEd Cross-Exhibit 13.

17 (Whereupon, ComEd Cross-Exhibit

18 No. 13 was marked for

19 identification.)

20 MR. BERNET: I have no further questions.

21 JUDGE DOLAN: Thank you.

22 Any redirect?

1           MR. ROBERTSON: Can I have a minute?

2           JUDGE DOLAN: Certainly.

3           MR. BERNET: I want to move for admission of  
4 those exhibits or we can do that at the end.

5           JUDGE DOLAN: Okay. That's fine.

6                               (Whereupon, there was  
7 a change in reporters.)

8           Q     A point of clarification, Mr. Chalfant. A  
9 reference was made to a percentage figure as 24.8  
10 percent during the cross-examination by ComEd?

11                       Is the correct figure which is shown  
12 on ComEd Cross Exhibit No. 10 and in your direct  
13 testimony 24.5 percent?

14           A     Yes, it is.

15           Q     Now, also there was a series of questions  
16 about your failure to use the approach you recommend  
17 for treatment of A and G expense and general and  
18 intangible plant in this case in the last ComEd case.

19                       Do you believe there are differences  
20 between the cases which justified your approach here?

21           A     There are dramatic differences between the  
22 cases. In particular in the last case which was test

1 year 2000, for that test year Commonwealth was  
2 essentially a virtually integrated utility with cost  
3 in the generation, transmission, and distribution  
4 functions. And the question in that case was how  
5 much of Commonwealth Edison's A and G costs and how  
6 much of their general and intangible plant should be  
7 allocated to the distribution function as opposed to  
8 the transmission or generation function. And I  
9 proposed the use of a labor allocator to make those  
10 distinctions which was essentially what the  
11 Commission adopted, although they adopted a slight  
12 variant of Mr. Lazare in that case.

13 In this case, the question is entirely  
14 different. Commonwealth Edison is now a distribution  
15 utility, and they don't have generation cost and they  
16 don't have transmission cost. So what we are looking  
17 at is a pool of costs that are referred to as A and G  
18 and a pool of facilities referred to as general and  
19 intangible plant, and the question now is totally  
20 different than it was in that case.

21 The question now is are those costs  
22 reasonable. And since we're in a transitional mode

1     being a totally different type of utility than it was  
2     in the last case, the best way to judge the  
3     reasonableness of the A and G and general and  
4     intangible plant cost in this case is to compare it  
5     to what the Commission found as a reasonable level  
6     for the distribution part of their utility in the  
7     last case.

8           Q     Now, also you were asked whether or not  
9     there had been a case in Illinois in which this  
10    approach that you recommend here for A and G and  
11    general and intangible plant had been used.

12                   Do you remember that question?

13           A     Yes.

14           Q     And your answer to that question was yes;  
15    is that correct?

16           A     That's correct.

17           Q     What case was that?

18           A     That was the Illinois Power case, Docket  
19    No. 01-0432.

20           Q     All right. And what was the approach  
21    that -- well, what did the Commission do with regard  
22    to the determination of the reasonable level of A and

1 G expense and general and intangible plant for  
2 Illinois Power in that case?

3 A Basically, they relied on as a test looking  
4 at the relationship between A and G cost and O and M  
5 cost and the relationship between distribution cost  
6 and general and intangible plant cost.

7 Q Is that the same basic approach you've  
8 taken in this case?

9 A Essentially, yes.

10 Q Was that -- to your knowledge, was there an  
11 appeal taken of the Commission's order in that case?

12 A Yes, Illinois Power appealed.

13 Q Was one of the issues -- to your knowledge,  
14 was one of the issues on appeal the issue of the  
15 appropriate determination of A and G and general and  
16 intangible plant?

17 A Yes.

18 Q To your knowledge, what was the treatment  
19 of that issue on appeal?

20 A The Court found that the Commission had  
21 properly handled that issue.

22 Q Also with reference to ComEd Cross Exhibit

1 No. 13, what does that show?

2 A That shows on a combined basis the change  
3 in administrative and general expenses -- I'm sorry,  
4 the change in the sum of O and M expenses and  
5 administrative and general expenses.

6 Q And why did you not look at these figures  
7 on a combined basis in your presentation?

8 A Really there are two reasons. First, it  
9 would be somewhat circular to decide what is the  
10 proper level of A and G expenses based on relating it  
11 to a set of costs that include A and G expenses  
12 themselves.

13 Secondly, in terms of what the Table 1  
14 shows that was used as a basis for the  
15 cross-examination exhibit, it shows that, in fact,  
16 while administrative and general expenses increased  
17 by about 97 million since test year 2000, O and M  
18 expenses, in fact, decreased by 60 million.

19 What that tells us is that apparently  
20 to the extent that A and G expenses were effective in  
21 lowering O and M costs, they were not economically  
22 effective in that it was costing ratepayers almost a

1       hundred million to achieve savings of 60 million.

2               MR. ROBERTSON:   I have no further questions.

3               JUDGE DOLAN:   Any recross?

4                       RECROSS-EXAMINATION

5                       BY

6                       MR. BERNET:

7               Q       Mr. Chalfant, you testified that in ComEd's  
8       current case there is no transmission function,  
9       that's your understanding?

10              A       In the delivery service rates, there are no  
11       transmission costs.

12              Q       But ComEd has a transmission function,  
13       right?

14              A       That's correct.

15              Q       And you testified about the -- about the  
16       conclusions, some of the conclusions you reached in  
17       the prior ComEd DST rate case, and you testified that  
18       that was a substantially different case than this  
19       case, correct?

20              A       Yes.

21              Q       But you are still seeking to impose the  
22       same ratio A and G compared to O and M that was

1 imposed in that case; isn't that right?

2 A That's correct.

3 Q You testified that A and G -- you testified  
4 about the extent to which A and G expenses were  
5 effective in lowering O and M expenses from the last  
6 case to this case, right?

7 A Yes.

8 Q But you didn't conduct any specific  
9 analysis of any specific expenses; isn't that  
10 correct?

11 A That's correct.

12 MR. BERNET: Nothing further.

13 MR. ROBERTSON: I have nothing.

14 JUDGE DOLAN: Thank you.

15 Mr. Bernet, do you want to introduce  
16 your...

17 MR. BERNET: I'd like to move for admission of  
18 ComEd Cross Exhibits 10, 11, 12, and 13.

19 JUDGE DOLAN: All right --

20 MR. FEELEY: I object to ComEd Cross Exhibit 11  
21 on relevance.

22 MR. BERNET: I'm happy to respond.



1 JUDGE DOLAN: Go ahead.

2 MR. BERNET: One of the things that

3 Mr. Chalfant testifies to is that ComEd failed to

4 explain -- adequately explain the reason for its

5 increases in general and intangible plant and A and G

6 expenses, and that letter describes data rooms that

7 ComEd had open that contained 25,000 pages of

8 materials for the parties to review. And so I think

9 the fact that Mr. Chalfant didn't review any of those

10 materials goes directly to the basis for his

11 conclusions.

12 JUDGE HALOULOS: Overruled.

13 MR. FEELEY: Can I respond?

14 JUDGE HALOULOS: Overruled.

15 JUDGE DOLAN: Just for what it's worth, it will

16 be admitted.

17 (Whereupon, ComEd Cross

18 Exhibit Nos. 10, 11, 12, 13 were

19 admitted into evidence as

20 of this date.)

21 MR. BERNET: Thank you, Mr. Chalfant.

22 THE WITNESS: Thank you.

1 JUDGE DOLAN: It looks like witness Hathhorn is  
2 our next witness.

3 Are we ready.

4 MR. FEELEY: At this time staff would call its  
5 next witness Diana Hathhorn.

6 (Witness sworn.)

7 MR. FEELEY: Ms. Hathhorn has two pieces of  
8 testimony. The first, her direct testimony, is ICC  
9 Staff Exhibit 1.0 and consists of schedules 1.1  
10 through 1.12 and attachments A, B, C, and D.  
11 Schedules 1.11 and 1.12 are confidential. There's a  
12 confidential and public version of her Exhibit 1.0.

13 Her rebuttal testimony is marked for  
14 identification as ICC Staff Exhibit 12.0. That also  
15 has schedules 12.1 through 12.12 attached. 12.11 and  
16 12.12 are confidential, and there's a confidential  
17 and public version of that piece of testimony.

18 And Ms. Hathhorn is available for  
19 cross-examination. At this time Staff would move to  
20 admit into evidence ICC Staff Exhibit 1.1, all the  
21 attached schedules and attachments A through D and  
22 ICC Staff Exhibit 12.0 and its attached schedules

1 12.1 through 12.12.

2 JUDGE DOLAN: Any objection?

3 MR. THOMA: No objection.

4 JUDGE DOLAN: ICC Staff Exhibit 1.0 with  
5 schedules 1.1 through 1.12 with schedule 1.11 and  
6 schedule 1.12 confidential and public versions are  
7 admitted along with exhibits A, B, C, and D is  
8 admitted into the record. And ICC Exhibit 12.0 with  
9 schedules 12.1 through 12.12 with 12.11 and 12.12,  
10 both a confidential and public version, is admitted  
11 into the record.

12 Was there an A, B, C, and D to 12?

13 MR. FEELEY: There's no attachments to Staff  
14 Exhibit 12.0, just the schedules.

15 JUDGE DOLAN: Okay. So that's it. Thank you.

16 (Whereupon, ICC Staff Exhibit.

17 Nos. 1.0 and 12.0 were  
18 admitted into evidence as  
19 of this date.)

20 (Witness previously sworn.)

21

22

1 DIANA HATTHORN,  
2 called as a witness herein, having been previously  
3 sworn, was examined and testified as follows:

4 CROSS-EXAMINATION

5 BY

6 MR. GARG:

7 Q Hello, Ms. Hathhorn. My name is Rishi Garg  
8 and I work for the Attorney General's Office and I  
9 have a few questions for you.

10 Are you the staff witness sponsoring  
11 rate base -- testimony about rate base?

12 A No.

13 Q Are you familiar with Staff Exhibit 1.0  
14 schedule 1.3?

15 A Yes, I prepared that schedule.

16 Q I have some questions about that. Can you  
17 please refer to it.

18 That schedule is a summary of staff's  
19 proposed rate base, correct?

20 A That's correct.

21 Q It begins with the company's -- it begins  
22 with the company's rate base and shows the effect of

1       staff's proposed adjustments, correct?

2           A     Yes.

3           Q     The company includes a pro forma adjustment  
4       to plant for post test year additions to the plant  
5       services in its rate base, correct?

6           A     That sounds correct. I didn't review those  
7       additions, so I just started with the company's pro  
8       forma balances.

9           Q     Are you aware of whether in line 1 and line  
10      2 in the company's adjustment they included a pro  
11      forma adjustment to the plant for post test year  
12      additions to the plant services?

13          A     That sounds correct, but I think staff  
14      witness Griffin reviewed those additions.

15          Q     Okay. Are you aware of whether staff  
16      eliminated that adjustment or not?

17          A     Staff did not.

18          Q     Staff did not eliminate. Okay.

19                        Would you agree that as those post  
20      test year plant additions are being made, the  
21      accumulated reserve for depreciation is also growing?

22           MR. FEELEY: Objection, beyond the scope of

1     this witness's testimony.

2             JUDGE DOLAN:   What was the question again, I'm  
3     sorry.

4             MR. GARG:   I was asking if she would agree that  
5     as those post test year plant additions are being  
6     made, the accumulated reserve for depreciation is  
7     also growing.

8                     Could I have one second before I  
9     respond?

10            JUDGE DOLAN:   Sure.

11            MR. GARG:   My response, your Honor, is simply  
12     that included in Ms. Hathhorn's testimony is a  
13     schedule containing elements of rate base and staff  
14     adjustments, and my question is with regard to an  
15     adjustment to rate base.

16            MR. FEELEY:   And he's addressing a specific  
17     adjustment.   I think Ms. Hathhorn indicated that it  
18     was another staff witness who -- if it was his issue  
19     would be directed to that person and not her.

20            JUDGE DOLAN:   I'll sustain the objection.

21                     Mr. Feeley, just for clarifying the  
22     record, did we file a confidential and a public

1 version of the whole testimony, or is it just the  
2 schedules that are?

3 MR. FEELEY: The whole testimony.

4 JUDGE DOLAN: So there's a confidential 12.

5 MR. FEELEY: But the only thing confidential in  
6 the confidential version of the testimony is  
7 schedules -- the last two schedules, .11 and .12 for  
8 1.11 and --

9 JUDGE DOLAN: Okay.

10 MR. FEELEY: And I think it's actually the last  
11 two pages of those schedules.

12 JUDGE DOLAN: Okay.

13 MR. GARG: Q Ms. Hathhorn, are you familiar  
14 with the final order in the last Ameren rate case,  
15 consolidated Dockets 03-0008, 03-0009, 02-0798  
16 consolidated; are you familiar with that case?

17 A I read them a while ago.

18 Q I have a copy of a page from that order,  
19 the Commission's final order that I'd like to show  
20 you.

21 Would you agree, Ms. Hathhorn, with  
22 the statement contained in the final order from that

1 case, that first paragraph under where it says  
2 Commission conclusion where it says consistent with  
3 the Commission's test year rules, the utility has the  
4 right to propose test year pro forma capital  
5 additions to historical test year. Nevertheless, the  
6 Commission has an obligation to evaluate any such  
7 proposed pro forma capital addition to ensure  
8 consistency with the principal underlying test year?

9 MR. FEELEY: Objection, again going beyond the  
10 scope of this witness's testimony.

11 JUDGE DOLAN: Well, I think she can either  
12 agree or disagree with what the order says. But  
13 beyond that I think it's...

14 THE WITNESS: I actually didn't see what  
15 paragraph you're reading from.

16 MR. GARG: Q Under where it says Commission  
17 conclusion, do you see that?

18 A Yes.

19 Q The first line. One second.

20 The first line, the Commission  
21 generally concurs with Ameren that, and then  
22 consistent with the Commission's test year rules.



1           A     I agree that's what the language says.

2           MR. GARG:   Okay.   I have no further questions.

3           JUDGE DOLAN:   Thank you.

4                     Mr. Thomas, you look like you're the  
5   only other one that has questions for Ms. Hathhorn.

6           MR. THOMAS:   I think that's correct.

7           JUDGE DOLAN:   Proceed.

8           MR. THOMAS:   Thank you.

9                     CROSS-EXAMINATION

10                    BY

11                    MR. THOMAS:

12           Q     Ms. Hathhorn, my name is Dale Thomas.   I  
13   will be cross-examining you on behalf of ComEd.

14                     You are an accountant in the  
15   accounting department of the financial analysis  
16   division of the Commission, correct?

17           A     That's correct.

18           Q     And your testimony in this case has two  
19   purposes; is that right?

20           A     Yes.   The first purpose is to present  
21   staff's revenue requirement, and then the second  
22   would be the individual issues I was assigned to

1 analyze.

2 Q Correct.

3 Those individual issues included  
4 things like affiliated interest transactions,  
5 charitable contributions and others, correct?

6 A That's correct.

7 Q Over the course of your testimony and  
8 testimony by the ComEd witnesses, I think staff and  
9 ComEd have agreed upon certain things or come close  
10 at least on certain things. I'm not going to go over  
11 all that.

12 The one I'd like to get on the record  
13 is one of the issues in which we have first disagreed  
14 was new post PUHCA reporting requirements; and I  
15 gather we now have agreement that as part of ComEd's  
16 annual form 21 filing detailing BSC costs recorded in  
17 the accounts you specified that we will provide those  
18 subject to a \$100,000 materiality threshold, and  
19 staff has agreed to that; is that correct?

20 A Yes. I believe Ms. Houtsma agreed to that  
21 in her surrebuttal, and that satisfies staff's  
22 request.

1           Q     Good.

2                     Let's take a brief look at staff's  
3     overall revenue requirement recommendation.

4                     After adjustments ComEd is now  
5     requesting an overall revenue requirement of  
6     1.86 -- 1864.9 million; isn't that correct?

7           A     Are you looking at my rebuttal schedules?

8           Q     I'm actually looking at Mr. Hill's  
9     surrebuttal testimony, line 102.

10           MR. FEELEY:   Do you have a reference to her  
11     testimony?

12           MR. THOMAS:   I can provide a copy of Mr. Hill's  
13     surrebuttal, if that's helpful.  I'm just referencing  
14     what ComEd itself is now requesting.

15           THE WITNESS:   This is Mr. Hill's surrebuttal?

16           MR. THOMAS:   Q   Correct.

17           A     I see that's what his testimony says.  My  
18     latest analysis is from Mr. Hill's rebuttal revenue  
19     requirement computation.

20           Q     I'm not going to ask you any questions  
21     about updating that and so forth.  I'm just asking  
22     you to agree at least on the record that that is what

1 Mr. Hill says the company is now seeking, correct?

2 A That's correct.

3 Q And that amount, that is, 1864.9 million,  
4 compares to ComEd's pro forma 2004 revenues under  
5 current delivery service rates of 1544.9 million;  
6 isn't that correct?

7 A That's correct.

8 Q And staff's overall revenue requirement  
9 recommendation in this case as presented in your  
10 rebuttal testimony without miscellaneous revenues is  
11 1512.0 million, correct?

12 A Yes.

13 Q And so that's a reduction to ComEd's  
14 requested revenue requirement of over 352 million;  
15 isn't that correct?

16 A That's correct.

17 Q And it is only 4.37 million roughly more  
18 than ComEd's previously approved revenue requirement  
19 based on 2000 cost levels, correct?

20 A I don't have the 2000 numbers in front of  
21 me.

22 Q But that sounds about right to you, right?

1           A     I wasn't on that case. I'm not familiar.

2           Q     Okay. Let's see if we can put your revenue  
3 requirement in some perspective.

4                     The last rate case was based on the  
5 2000 test year, correct?

6           A     That's what I understand.

7           Q     And since January 1st, 2001, ComEd's gross  
8 distribution plant and service alone has increased  
9 over 2 billion; isn't that correct?

10          A     January 1st of what year?

11          Q     2001.

12          A     I don't think I have that information. My  
13 schedules, I start with the company's test year 2004  
14 presentation, and I've made adjustments from that, so  
15 I don't have anything with the last rate case to this  
16 one in my testimony.

17          Q     Well, if you look at Mr. Hill's surrebuttal  
18 at lines 119 to 122, I think you'll see that he  
19 suggested that is, in fact, the number. I don't  
20 think there's been any dispute in this case that it's  
21 over 2 billion.

22                     Would you agree?

1           A     It says that ComEd's gross distribution  
2     plant and service alone increased over \$2 billion at  
3     line 119.

4           Q     I'm not going to ask you to add or subtract  
5     any numbers. I'm just trying to get a perspective on  
6     this.

7                     And staff witness Linkenback who  
8     reviewed the plant additions for unreasonableness and  
9     imprudence didn't find any of these costs to be  
10    imprudent or unreasonable in any amount, isn't that  
11    correct, the plant addition?

12          A     That's correct.

13          Q     And you'd agree there's been inflation  
14    since 2000, correct?

15          A     Yes.

16          Q     And you also would not disagree that  
17    salaries and health care costs and the like have gone  
18    up?

19          A     Salaries for some people have gone up.

20          Q     And you would also agree that demands for  
21    reliability and load are greater now than they were  
22    at the end of 2000, correct?

1           MR. FEELEY:  Objection, beyond the scope of  
2   this witness's testimony.

3           MR. THOMAS:  I'm just asking in general.  It's  
4   not --

5           JUDGE DOLAN:  Overruled.

6           THE WITNESS:  I don't know if ComEd's load has  
7   went up since 2000.

8           MR. THOMAS:  Q  That's not something you'd  
9   consider?

10          A    I didn't review that.

11          Q    Well, in fact, I think, is it correct to  
12   say that you did not personally make a determination  
13   the revenue requirement that you're presenting would  
14   be sufficient for ComEd to meet all of its customer  
15   service operating, regulatory, and labor obligations  
16   and enable it to continue improving reliability?

17          A    I did not personally make that  
18   determination.

19          Q    I believe you testified that in presenting  
20   staff's overall revenue requirement you are  
21   incorporating adjustments by other staff witnesses  
22   such as Mr. Lazare and Ms. Ebrey, correct?

1           A     Yes.

2           Q     So if the Commission were to reject some or  
3     all of their adjustments, the overall staff  
4     recommended revenue requirement presented in your  
5     testimony would also have to be recalculated; isn't  
6     that correct?

7           A     Yes.

8           Q     One of the areas of adjustment which you  
9     address in your testimony concerns recovery by ComEd  
10    of its estimated legal fees and expenses related to  
11    the procurement proceeding, correct?

12          A     Yes, that's correct.

13          Q     And as to those legal fees and expenses,  
14    staff's position is that cost recovery of ComEd's non  
15    rate base procurement expenses should be recovered  
16    through ComEd's proposed supply administration  
17    charge, correct?

18          A     Yes.

19          Q     ComEd is also incurring legal fees and  
20    expenses related to this case, correct?

21          A     That's correct.

22          Q     And staff does not object to amortizing



1       those expenses over a three-year period, correct?

2               A       Correct.

3               Q       So the dispute here is whether ComEd should  
4       be allowed to include in its unamortized balance a  
5       rate case expense in rate base and the unamortized  
6       balance of procurement case costs in rate base,  
7       correct?

8               A       I have a few disputed issues.   For  
9       procurement and rate case I'm disputing including the  
10      unamortized balance in rate base.

11                      For the procurement expense legal  
12      fees, I'm recommending recovering those expenses  
13      through the supply administration charge rather than  
14      delivery service rates.   And I also adjust the level  
15      that would go to the supply administration charge and  
16      I adjust the level of rate case expense.

17              Q       Correct.

18                      The only thing I'm going to focus on  
19      at this point is that we sort of have three areas.  
20      There's no disagreements between staff and ComEd as  
21      to use of a three-year amortization period for  
22      ComEd's rate case expenses, correct?

1           A     That's correct.

2           Q     And ComEd and staff disagree as to how and  
3     where to obtain recovery of ComEd's procurement case  
4     expenses, correct?

5           A     That's correct.

6           Q     And we also disagree as to whether there  
7     should be an inclusion of the unamortized balance of  
8     rate case or procurement case expenses in rate base  
9     over the next three years, correct?

10          A     Correct.

11          Q     So let's take those one at a time starting  
12     with how or where ComEd should recover its  
13     procurement case expenses.

14                     You do not disagree with ComEd that  
15     such costs are recoverable, correct?  Instead you  
16     disagree with ComEd on how they should be recovered  
17     or where they should be recovered?

18          A     That's correct.

19          Q     And ComEd's position is these costs should  
20     be recovered through the delivery service revenue  
21     requirement; isn't that correct?

22          A     Yes.

1           Q     And your position is that instead these  
2     costs should be recovered through the supply  
3     administration charge, correct?

4           A     Yes.

5           Q     Now, the supply administration charge  
6     applies only to supply customers who choose ComEd as  
7     their supplier; isn't that right?

8           A     That's what I understand.

9           Q     So that, for example, a delivery services  
10    customer taking supply from another electric service  
11    supplier would not pay a supply administration  
12    charge, correct?

13          A     Yes.

14          Q     But all customers taking supply as well as  
15    delivery from ComEd, in other words, all of ComEd's  
16    bundled customers, would pay a supply administration  
17    charge, correct?

18          A     That's my understanding.

19          Q     You would agree, would you not, that  
20    subject to a service being declared competitive by  
21    the Commission, ComEd currently has a statutory  
22    obligation to make supply service available to all

1 customers under Section 16-103 of the Public  
2 Utilities Act?

3 MR. FEELEY: Objection, calls for legal opinion  
4 by this witness.

5 MR. THOMAS: On the record, I don't want a  
6 legal opinion by the witness. I'm perfectly happy to  
7 state on the record that she's not giving a legal  
8 opinion, but I don't think there's any dispute in  
9 this record that ComEd has an obligation called a  
10 provider of last resort obligation. It is a word  
11 that the witness herself has used in the past.

12 MR. FEELEY: With that understanding --

13 JUDGE DOLAN: She can answer the question.

14 THE WITNESS: It's my understanding that ComEd  
15 has a statutory obligation according to 16-103a of  
16 the Public Utilities Act.

17 MR. THOMAS: Q And could we agree to call this  
18 a provider of last resort obligation?

19 A Yes.

20 Q And the ability of a delivery services  
21 customer who is with another supplier to come back to  
22 ComEd as a provider of last resort for supply is a

1 benefit to that customer, is it not?

2 A Yes.

3 Q Now, the procurement costs that ComEd seeks  
4 to recover from all customers through the delivery  
5 services tariff are the costs incurred in that  
6 receiving so that among other things ComEd can  
7 fulfill all of its supply obligations including this  
8 provider of last resort obligation; isn't that  
9 correct?

10 A The expenses that ComEd incurred in the  
11 procurement case were incurred to change the method  
12 that ComEd will use to fulfill its responsibility as  
13 a provider of last resort, but it -- those expenses  
14 did not establish the obligation so you can't equate  
15 the two.

16 Q Right. I'm not trying to equate the two.  
17 I don't disagree it didn't establish the obligation  
18 as you said.

19 Those expenses were incurred in part  
20 to enable it to meet that obligation as it arises in  
21 the future?

22 A The expenses in question in this case, the

1 attorney fees?

2 Q The arrangement for supplies. Supply will  
3 be -- will now be decided pursuant to the rules set  
4 down in that case, correct?

5 A Yes.

6 Q And if a delivery services customer in the  
7 future comes back to ComEd, ComEd has to have  
8 sufficient supply to meet the needs of those  
9 customers who come back, correct?

10 A Yes.

11 Q And that is the provider of last resort  
12 obligation, correct?

13 A Yes.

14 Q Now, I think we're also agreed that ComEd  
15 is not seeking to recover through delivery service  
16 tariffs the cost associated with the actual provision  
17 of full requirements electric service supply,  
18 correct?

19 A That's correct.

20 Q So, for example, these would be the costs  
21 of ComEd's energy acquisition department, contract  
22 administration costs, and the like, correct?

1           A     Those are in the supply administration  
2 charge.

3           Q     And ComEd will collect those costs through  
4 the supply administration charge, correct?

5           A     Yes.

6           Q     So the difference between ComEd and staff  
7 on this issue is you propose to collect through the  
8 supply administration charge not only those costs,  
9 that is, the cost of the actual provision of full  
10 requirements electric supply but also the procurement  
11 case costs incurred at least in part because of the  
12 existence of ComEd's provider of last resort  
13 obligation, correct?

14          A     That's correct.

15          Q     Thus under your proposal, all the costs of  
16 the procurement case including the costs incurred  
17 because of this provider of last resort obligation  
18 will be recovered from ComEd bundled customers who  
19 take supply and delivery from ComEd, correct?

20          A     That's correct.

21          Q     And none of those costs will be paid by  
22 delivery services only customers; isn't that correct?

1           A     Yes.

2           Q     And as a broad general matter, most bundled  
3 customers today are residential customers; isn't that  
4 correct?

5           A     I believe so.

6           Q     So that under your proposal bundled  
7 residential customers will be paying the costs  
8 incurred in the procurement case by ComEd to meet its  
9 provider of last resort obligation, and the large  
10 commercial and industrial customers who stand to  
11 benefit from that obligation will only incur those  
12 costs if and when they come back to ComEd for supply;  
13 isn't that correct?

14          A     Under my proposal, only those customers who  
15 take supply from ComEd would pay the procurement case  
16 costs.

17          Q     Right.

18                   So if you have a large industrial and  
19 commercial customer who is taking service from  
20 another supplier, they don't pay a supply  
21 administration charge, correct?

22          A     I don't think so.



1           Q     And it's only when they come back to ComEd  
2     under that provider of last resort obligation that  
3     they will pay a supply administration charge,  
4     correct?

5           A     Yeah, if they came back to ComEd for any  
6     reason.

7           Q     Now, the second issue where staff and ComEd  
8     disagree is through the inclusion by ComEd of the  
9     unamortized balance of its procurement and rate base  
10    cost in rate base; isn't that correct?

11          A     Yes.

12          Q     And this issue arises, as we just agreed I  
13    think, not only with respect to the unamortized  
14    balance of rate case expenses but the potential  
15    unamortized balance of procurement case expenses if  
16    as you state in your direct testimony the Commission  
17    does not accept your primary position which is to  
18    recover those procurement case expenses through the  
19    supply administration charge; isn't that correct?

20          A     Well, on the procurement case expenses,  
21    ComEd has proposed two pieces, and I calculated the  
22    amount to be recovered in the supply administration

1 charge only based on their expense request. I did  
2 not use the unamortized portion to rate base in that  
3 calculation.

4 Q Right.

5 But you understand that ComEd's  
6 request is, in fact, to include in delivery services  
7 rates the unamortized balance of both the procurement  
8 case expenses and the rate case expenses; isn't that  
9 correct?

10 A Yes.

11 Q So now when we're talking about the  
12 recovery of the unamortized balance of procurement  
13 and rate case costs in rate base, we're talking about  
14 giving the shareholders a return on that unamortized  
15 balance so they're reimbursed for the time value of  
16 their money for, say, the three-year period over  
17 which those expenses would be collected; is that  
18 correct?

19 A Yes.

20 Q And you do not dispute that by removing the  
21 unamortized balance of those kinds of expenses from  
22 the test year rate base, shareholders may obtain no

1 reimbursement for the time value of the money,  
2 correct?

3 A That's correct. It depends upon the final  
4 amount spent and the length of time until the next  
5 rate case.

6 Q But you argue on the other hand that if the  
7 unamortized balance of procurement of rate case  
8 expenses is included in the rate base, there is a  
9 risk that ratepayers may be overcharged for these  
10 expenses due to the short term -- due to an  
11 amortization period which might be too short; is that  
12 correct?

13 A Yes.

14 Q And your concern that there is a risk that  
15 ratepayers may be overcharged for the unamortized  
16 balance of the rate case and procurement case  
17 expenses has to do with the fact that the  
18 amortization period may expire before ComEd has new  
19 rates, correct?

20 A Yes, that's correct.

21 Q You did not perform any study estimating  
22 the likelihood that or the conditions under which

1 using a three-year amortization period for these  
2 expenses ComEd would over collect these costs,  
3 correct?

4 A That's correct.

5 Q Ms. Hathhorn, have you read Mr. Jerry  
6 Hill's surrebuttal testimony?

7 A Yes.

8 Q Now, he testifies that -- and I'm quoting  
9 it, it's at lines 599 to 602 -- a look at history  
10 shows that the Commission decided consistently that a  
11 three- or four-year amortization period is a  
12 reasonable expected life of the rates set within  
13 ComEd's rate case proceedings, end quote.

14 Have I read that correctly?

15 A I agree that's what his testimony says.

16 Q And I think we established earlier there's  
17 no disagreement between ComEd and staff on use of a  
18 three-year amortization period in this case, at least  
19 for rate case expenses, correct?

20 A That's correct.

21 Q Now, the ComEd cases that Mr. Hill is  
22 referring to go back all the way to 1990; isn't that

1 right?

2 A Yes.

3 Q And those are Dockets 90-0169, 94-0065,  
4 99-0117, and 01-0623, correct?

5 A I think the last one was 01-0423.

6 Q Correct. Would that I was a better typist.

7 Now, each of those cases the  
8 Commission approved a three- or a four-year  
9 amortization period of rate case expenses; isn't that  
10 correct?

11 A That's correct.

12 Q In Mr. Hill's testimony, he sets out the  
13 dates that the period -- the amortization period as  
14 well as how much time passed before new rates were in  
15 effect; isn't that correct?

16 A Yes.

17 Q And the reality is that in each case the  
18 Commission was pretty close to being right, was it  
19 not, on how long the amortization period should be?

20 A The Commission approved ComEd's requested  
21 amortization period, so...

22 Q If you look at Mr. Hill's surrebuttal

1 testimony on those pages, do you have any basis for  
2 disagreeing with the facts he sets out there as to  
3 how close the amortization period approved by the  
4 Commission was to the actual time between the end of  
5 the preceding rate case and the filing of new rates?

6 A No.

7 Q Now, in one of these cases, Docket 99-0117,  
8 the Commission did, in fact, allow ComEd to recover  
9 the unamortized balance of the rate case expenses in  
10 its delivery service rates, correct?

11 A Yes, that's correct.

12 Q And the amortization period in that case  
13 was three years, correct?

14 A Yes.

15 Q And effective dates for the interim rates  
16 set in ComEd's next docketed rate proceeding was a  
17 period of two years and seven months, correct?

18 MR. FEELEY: Could you restate the question.

19 MR. THOMAS: Sure.

20 Q I think we agree that the amortization  
21 period in this case was -- approved by the Commission  
22 was three years, correct?

1           A     Yes.

2           Q     And the effective date for the interim  
3 rates set in ComEd's next docketed rate proceeding  
4 was April 2002 which is a period of two years and  
5 seven months, correct?

6           A     I agree that's -- I have no reason to doubt  
7 that's what Mr. Hill states in his surrebuttal at  
8 line 619.

9           Q     So certainly you would agree that the  
10 amortization period was not too short in that  
11 proceeding, correct?

12          A     It was not too short.

13          Q     Let's move on to another area. This is BSC  
14 charges.

15                   BSC stands for Business Services  
16 Company, correct?

17          A     Yes.

18          Q     And it's really the Exelon Business  
19 Services Company, correct?

20          A     Yes.

21          Q     And I think we have two areas of dispute  
22 with respect to these charges.

1                   One has to do with the -- specifically  
2   with the inputs which are used to determine the  
3   allocation to ComEd, one type -- type of charges for  
4   BSC services provided to ComEd, namely corporate  
5   governance charges, correct?

6           A     Yes.

7           Q     The other area of dispute has to do with  
8   whether there should be an adjustment to reduce  
9   ComEd's affiliate charges from BSC to reflect what  
10   you consider to be a normal level of test year costs,  
11   correct?

12          A     Correct.

13          Q     Let's first focus on your proposed  
14   disallowance of \$663,000 in corporate governance  
15   costs charged by Exelon BSC to ComEd.

16                   I think we can agree that BSC is the  
17   central services company the SEC required under PUHCA  
18   for utility holding company systems for utilities in  
19   multiple states; is that correct?

20          A     That sounds correct.

21          Q     And corporate governance costs include  
22   services such as accounting, financial, legal,



1 executive, strategic planning, correct?

2 A That's correct.

3 Q And I take it we have no disagreement that  
4 the amount actually charged by BSC to ComEd for  
5 corporate governance costs in the 2004 test year was  
6 \$663,000 higher than you recommend be approved,  
7 correct?

8 A Yes, on a jurisdictional basis.

9 Q So the basis of your disallowance is not  
10 that ComEd was charged the improper amount, improper  
11 amount, only that for rate making purposes you  
12 recommend that the amount be recalculated using in  
13 hindsight actual 2004 data rather than the data  
14 projected at the end of 2003, correct?

15 MR. FEELEY: Could you clarify what you mean by  
16 improper? You said improper, that ComEd was charged  
17 the improper. What do you mean by improper?

18 MR. THOMAS: Let me rephrase that.

19 Q The basis for your disallowance is not that  
20 ComEd was not charged an incorrect amount or  
21 inaccurate amount but only that for rate making  
22 purposes you recommend that the amount be

1        recalculated using actual 2004 data rather than the  
2        data that was projected at the end of 2003, correct?

3            A        That's correct.

4            Q        Now, the GSA governs whether a corporate  
5        governance expense should be directly or indirectly  
6        allocated to an Exelon affiliate including ComEd?

7            A        The general services agreement?

8            Q        Right.

9            A        Yes.

10          Q        And nothing come to your attention to  
11        indicate that ComEd's corporate governance expenses  
12        failed to comply with the GSA; isn't that correct?

13          A        That's correct.

14          Q        And with respect to corporate governance  
15        costs, what the GSA specifies must be used is  
16        something called the Modified Massachusetts Formula  
17        or MMF, correct?

18          A        I don't believe the GSA actually states  
19        that the MMF has to be used. The MMF came out of the  
20        SEC's review of ComEd's allocation procedure, and  
21        then the SEC approved that method with ComEd. But if  
22        you look at the actual GSA itself, it does not refer

1 to the MMF.

2 Q I think, in fact, what's happened is the  
3 SEC requirement has modified the GSA, but I think we  
4 agree that the MMF is what the SEC requires ComEd now  
5 to use for allocating these kinds of expenses,  
6 correct?

7 A Yes, that began in 2004.

8 Q And as Ms. Houtsma explained in her  
9 testimony, Exelon BSC uses projected ComEd values for  
10 gross revenue and direct labor and an actual ComEd  
11 value for assets from near the end of the calendar  
12 year as data inputs into the MMF to calculate the  
13 corporate governance allocation factor for the  
14 following year, correct?

15 A That's correct.

16 Q And the reason for this, as she explained,  
17 is that requiring the use of actual data to calculate  
18 final allocations would be very difficult to  
19 administer because the actual data is not available  
20 until after the books are closed for a given year,  
21 which would suggest the company would need to extend  
22 its financial close to finalize cost allocations,

1 correct?

2 MR. FEELEY: Objection, Ms. Houtsma's testimony  
3 speaks for itself.

4 MR. THOMAS: I'm simply asking her whether  
5 that, in fact, was what Ms. Houtsma explained. The  
6 witness has, in fact, responded to these very points.

7 JUDGE DOLAN: Overruled.

8 THE WITNESS: That sounds like Ms. Houtsma's  
9 testimony.

10 MR. THOMAS: Q You don't disagree as a  
11 knowledgeable accountant that the books are closed  
12 for a given year some number of months past that  
13 year, correct?

14 A Correct.

15 Q And, in fact, I think you made it clear  
16 that it is not your position that ComEd should change  
17 this allocation procedure, correct?

18 A That's correct.

19 Q And I presume that is in part based on  
20 these very kinds of reasons, is it not?

21 A Yes.

22 Q So your position is that your adjustment is

1 solely for rate making purposes; isn't that correct?

2 A That's correct.

3 Q Now, I think we've already agreed the  
4 amount actually charged to ComEd by BSC in the 2004  
5 test year was the amount calculated over the course  
6 of the -- was calculated as being -- using those  
7 projected direct labor gross revenues factors and the  
8 actual asset value factor from near the end of 2003,  
9 correct?

10 A Yes.

11 Q And the amount that was actually charged to  
12 ComEd by BSC in 2005 is again the amount allocated to  
13 ComEd as services were rendered in 2005 using end of  
14 2004 actual and projected values as inputs to the  
15 MMF, correct?

16 A I don't have any knowledge that they  
17 changed the way they calculated their MMF, so that  
18 sounds right --

19 Q So far as you know, this process is  
20 continuing, correct?

21 A That's correct.

22 Q So what you advocate is solely for the

1 purposes of the rate case to change the MMF  
2 allocations actually used in 2004 by now inputting  
3 using hindsight actual year end 2004 data into the  
4 MMF for those values, correct?

5 MR. FEELEY: Objection to the use of the word  
6 hindsight.

7 JUDGE DOLAN: Rephrase.

8 MR. THOMAS: I can strike the word hindsight,  
9 but I don't think there can be much question. The  
10 witness has advocated as already agreed that she's  
11 using data that wasn't available at the time the  
12 services were being rendered in the test year.

13 JUDGE DOLAN: Subject to that, you can answer.

14 THE WITNESS: My adjustment takes the ComEd  
15 expenses calculated with the projections as you  
16 described using the actual expense levels which were  
17 not available at the time they were originally  
18 calculated.

19 MR. THOMAS: Q Right.

20 So the end result is a different total  
21 cost for the 2004 test year for BSC governance  
22 services than ComEd actually paid in 2004, correct?

1           A     That's true.

2           Q     Let's turn to the other adjustment, which  
3     is your affiliate allocation adjustment.

4                     As a understand it, you now propose to  
5     reduce ComEd's affiliate charges from BSC by about 10  
6     million; is that correct?

7           A     Yes.

8           Q     And this is a smaller adjustment than the  
9     nearly 24 million adjustment that you originally  
10    proposed in schedule 1.8 of your direct testimony;  
11    isn't that correct?

12          A     That's correct.

13          Q     And you reduced your original proposed  
14    adjustment in response to questions raised in  
15    rebuttal testimony by ComEd witness Ms. Houtsma,  
16    correct?

17          A     Yes.

18          Q     And Ms. Houtsma testified that if your  
19    adjustment were completely correctly calculated, that  
20    adjustment should be still further reduced to less  
21    than 3 million; isn't that correct?

22          A     Yes.

1           Q     Let's take a look at what's going on here.  
2     In your direct testimony, you set forth your  
3     originally proposed \$24 million adjustment to, as you  
4     put it, I'm quoting, reduce ComEd's affiliate charges  
5     from Exelon Business Services Company to reflect a  
6     normal level of test year costs, unquote.

7                     Did I read that correctly?

8           A     Yes.

9           Q     And what you did was to look at BSC charges  
10    in certain specified accounts for the years 2001  
11    through 2004 and determine that the sum of these  
12    accounts for those years ranged from approximately 74  
13    million in 2002 to a high of 119 million in the test  
14    year, correct?

15          A     Yes.

16          Q     And you will agree that the types of BSC  
17    charges in these accounts are legal, information  
18    services, human resources, accounts payable,  
19    procurement, and other similar charges?

20          A     Yes.

21          Q     So as far as your adjustment is concerned,  
22    what you did was to average the charges in these



1 accounts over the four-year period 2001 through 2004,  
2 compare that average to the jurisdictional test year  
3 balance for those accounts, and disallow the  
4 difference, crudely speaking?

5 A That's correct.

6 Q And I think we already established that  
7 original recommended disallowance established through  
8 that process was about 24 million, correct?

9 A Yes.

10 Q Now, to shorten things a bit, in her  
11 rebuttal testimony Ms. Houtsma pointed out that the  
12 proposed disallowance failed to account correctly for  
13 energy delivery shared services, or EDSS, in the  
14 calculations, and you made some adjustments for that,  
15 correct?

16 A Yes.

17 Q And she also explained that the increase in  
18 BSC costs over the 2001 to 2004 period is  
19 attributable to three factors, and I think you've  
20 reached agreement at least on two of those; is that  
21 correct?

22 A Yes.

1           Q     And those two are the increase in cost  
2     allocated to ComEd because of the SEC required use of  
3     the MMF to allocate corporate governance costs and  
4     secondly the increase due to the sale of Exelon's  
5     unregulated enterprises business, correct?

6           A     That's correct.

7           Q     So I think the only major point of  
8     disagreement left between ComEd and staff on these  
9     charges is what I will call increased cost due to  
10    centralization; is that correct?

11          A     That's correct.

12          Q     One of the points of disagreement here is  
13    whether you have still adequately accounted for the  
14    increases in EDSS costs at BSC, correct?

15          A     Yes.

16          Q     Fundamentally this is a dispute about the  
17    use of averaging, is it not?

18          A     I don't believe so.

19          Q     Well, you have now included EDSS costs in  
20    all four years of the average, and because of the  
21    way -- of the Exelon Way reorganization, those costs  
22    increased by 18.4 million in 2004 compared to 2003,

1 correct?

2 A Is that on the schedule somewhere?

3 Q I think if you look at your schedule 12.8,  
4 Page 2 of 2, if you look at that last column under  
5 total, there is an increase of about -- in that  
6 column of about 18 million in EDSS cost between 2003  
7 and 2004, correct?

8 A That's correct.

9 Q Now, Ms. Houtsma has testified that this  
10 increase in costs at BSC was because 436 employees  
11 were transferred from ComEd to BSC on January 1st,  
12 2004, 337 of which went to the EDSS department at  
13 BSC, correct?

14 A That's what she testified.

15 Q You don't challenge that 337 employees were  
16 transferred from ComEd to the EDSS department at BSC  
17 on January 1st, 2004, do you?

18 A No.

19 Q That transfer would, all else equal,  
20 significantly increase the EDSS costs at BSC to be  
21 allocated to ComEd, correct?

22 A Yes.

1           Q     And, of course, costs associated with the  
2     same employees would go down at ComEd?

3           A     Yes.

4           Q     So as a result of this transfer, EDSS costs  
5     in the accounts at which you focused -- I think we're  
6     again talking about the schedule 12.8, Page 2 of 2 --  
7     increased, as we said, from approximately 6.3 million  
8     to 24.7 million, correct?

9           A     Yes.

10          Q     Now, as a matter of mathematics, when you  
11     take an average of four years of costs and the costs  
12     in the fourth year are significantly higher than the  
13     costs of the other three years, that average figure  
14     will be much, much lower than the actual costs in the  
15     fourth year; isn't that correct?

16          A     Yes, that's mathematically correct.

17          Q     So if we -- what I'm going to do is I'm  
18     going to put a few figures up here, and I will  
19     represent that they are not precise because without a  
20     calculator my ability to deal with all sorts of  
21     decimal places and so forth is nonexistent.

22                     So this is basically 2001, 2, 3 and 4.

1 And if we look at that same column we're talking  
2 about, the costs were approximately 2.1 million in  
3 '01, 3.7 million in '02, 6.3 million in '03, correct?

4 A Yes.

5 Q And those sort of roughly add up to 12  
6 million, correct?

7 A Yes.

8 Q So to be simple because I am simple, I'm  
9 just going to put 4 million in each of those years  
10 which adds up to 12. That way I don't have to deal  
11 with all the decimal points.

12 Then in the fourth year, it goes up to  
13 24 million, correct?

14 A Yes.

15 Q Now, if I take the average of those four  
16 years, it's essentially 36 divided by 4 which is 9  
17 million, correct?

18 A Yes.

19 Q And that -- I'm sure there's much more that  
20 went into it, but basically by taking an average of  
21 four years, this is what you've done, correct?

22 A Yes. Well, I mean, I revised it in

1       rebuttal for Ms. Houtsma's requirements.

2               Q       I understand.

3                       Whereas, of course, the fourth year  
4       cost, that is, the test year costs are actually 24  
5       million, correct?

6               A       Yes.

7               Q       So now the issue here, isn't it, is one of  
8       the things we're trying to do in a rate case such as  
9       this is to figure out what costs from the test year  
10      are going to be reasonably representative of costs  
11      going forward when rates are in effect, correct?

12              A       That's correct.

13              Q       And I think Ms. Houtsma has testified and  
14      others have testified that the Exelon Way  
15      reorganization which caused these employees to be  
16      transferred to EDSS is at an end, correct?

17              A       I'll accept that she said that. I'm not  
18      sure if it's at an end.

19              Q       You read, I believe you said, the testimony  
20      of Mr. Jerry Hill, and he indicated that ComEd had  
21      incurred \$67 million of severance costs related to  
22      Exelon Way, correct?

1           A     I have no reason to dispute that.

2           Q     And I assume you don't think it's realistic  
3     that having incurred \$67 million of severance costs  
4     for this that they're going to all -- of a sudden  
5     people who are there are going to go back, do you?

6           MR. FEELEY:   Objection, calls for speculation  
7     on the part of this witness.

8           JUDGE DOLAN:   Sustained.

9           MR. THOMAS:   Q   I take it, Ms. Hathhorn, you  
10    don't disagree or you have no basis for disagreeing  
11    at this point that ComEd witnesses have indicated  
12    that this is going to be the state of affairs going  
13    forward as to these numbers of employees, correct?

14          MR. FEELEY:   You're asking if she agrees that  
15    ComEd witnesses have testified to that?

16          MR. THOMAS:   Yes.   I am not asking her for an  
17    independent opinion, just that, you know, my previous  
18    question was sustained on the grounds of speculation.  
19    I'll accept that.   All I want to establish here is I  
20    think she's aware because both Mr. Jerry Hill and  
21    Ms. Houtsma testified on this among others that the  
22    Exelon Way reorganization is at an end and these

1 employees are not going back.

2 THE WITNESS: I agree that that is what the  
3 ComEd witnesses testified to.

4 MR. THOMAS: Q All right. Now, another way to  
5 look at this is here we are. Here is the test year.

6 Now the question is what is the  
7 appropriate level of expenses for these BSC costs  
8 going forward, correct?

9 A That is the question.

10 Q And Ms. Houtsma testified that in 2005  
11 ComEd's total BSC charges were 256 million which is  
12 almost identical to the 254 million in BSC charges in  
13 2004; isn't that correct?

14 A Is that from her surrebuttal?

15 Q Yes.

16 A That sounds correct.

17 Q Okay. And you have no reason to believe  
18 her testimony as to those figures is incorrect, do  
19 you?

20 A I have no reason to disbelieve that.

21 Q And I think she also testified that in 2005  
22 the portion of the BSC costs in the accounts at which



1     you were looking was 130 million, which is well in  
2     excess of the average of 106.9 million on which you  
3     propose your adjustment; isn't that correct?

4             A     I read her surrebuttal once. I mean, I  
5     don't have it in front of me. That doesn't sound  
6     wrong, but you have a lot of figures in that.

7             Q     I could show it to you but --

8             A     It sounds like her testimony.

9             MR. THOMAS: I have no further questions.

10            JUDGE DOLAN: Redirect?

11            MR. FEELEY: Could we have five minutes?

12            JUDGE DOLAN: Certainly. We can go off the  
13     record.

14                                 (Whereupon, a short break was  
15                                 taken.)

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1 (Change of reporters.)

2 JUDGE DOLAN: Back on the record.

3 MR. FEELEY: Brief redirect.

4 REDIRECT EXAMINATION

5 BY

6 MR. FEELEY:

7 Q Ms. Hathhorn, do you remember during  
8 examination by Mr. Thomas discussing the supply of  
9 administration charge?

10 A Yes.

11 Q And regarding the procurement case  
12 expenses?

13 A Yes, I do.

14 Q Under ComEd's proposal, what customers  
15 would end up paying the procurement case expense?

16 A That would be all delivery services and  
17 customers.

18 Q And by all customers, would that include  
19 the 6-L customers?

20 A Yes, it would.

21 Q Do you remember Mr. Thomas was asking about  
22 your corporation governance adjustment?

1           A     Yes.

2           Q     And I believe he asked you if your  
3 adjustment was a normalization adjustment?

4           A     Yes, he did.

5           Q     Was normalization the only basis for your  
6 adjustment?

7           A     Normalization was the basis for my  
8 affiliate allocation adjustment. The corporate  
9 governance adjustment was based on a reasonableness  
10 analysis. I prepared direct and indirect charges,  
11 which was presented in my direct testimony, and  
12 analyzing the MMF allocator and proposing that the  
13 corporate governance charges be charged on actual  
14 2004 charges rather than projections.

15          Q     And going back to the procurement case,  
16 Mr. Thomas asked you if it was a benefit to customers  
17 for them -- to a customer to be able to come back to  
18 ComEd for its supply. Do you remember that?

19          A     Yes.

20          Q     And do you have any comments -- with regard  
21 to the benefit, is there -- do you have anything to  
22 add regarding what type of benefit that would be?

1           A     I recognize that all customers may  
2 indirectly benefit from the procurement case, but  
3 it's de minimus for those who do not take supply from  
4 ComEd compared to those who do.

5           MR. FEELEY: That's all I have.

6           JUDGE DOLAN: Thank you.

7                     Any recross?

8           MR. THOMAS: No recross.

9           JUDGE DOLAN: Thank you, Ms. Hathhorn.

10          MR. BRADY: The next witness that the staff  
11 will call is John Stutsman.

12          JUDGE DOLAN: Mr. Stutsman, do you want to  
13 please raise your right hand.

14                     (Witness sworn.)

15          JUDGE DOLAN: Thank you.

16                     Proceed, counsel.

17          MR. BRADY: Thank you, your Honor.

18                     Mr. Stutsman has prepared one piece of  
19 testimony for this proceeding that includes one  
20 attachment. The testimony is identified as ICC Staff  
21 Exhibit 10.0 Corrected, with the title of Direct  
22 Testimony. It was filed on e-docket with an e-docket

1     number of 165467 and filed on March 3rd, 2006.

2                     Mr. Stutsman also has an attachment  
3     identified as Attachment 10.1, which due to its size  
4     was filed in four parts. It was attached to his  
5     direct testimony. And the e-docket numbers for those  
6     four parts were 159356, 159358, 159361, and 159362.  
7     Attachment 1 -- attachment 10.1 was filed on e-docket  
8     on December 23rd, 2005.

9                     JOHN STUTSMAN,  
10    having been called as a witness herein, after having  
11    been first duly sworn, was examined and testified as  
12    follows:

13                     DIRECT EXAMINATION

14                     BY

15                     MR. BRADY:

16             Q     Mr. Stutsman, do you have any corrections  
17    to your testimony that you'd like to identify at this  
18    point?

19             A     Yeah. I'd like to identify one correction.  
20    Page 9, Attachment 10.1; and in the sentence that  
21    begins with, Of the 111 worst performing circuit in  
22    ComEd's 2004 reliability report 21 and in the left

1     paren, Table 8. It should have been -- it should  
2     have said Table 7, which is the table directly below  
3     it.

4                     That's the only thing I have.

5             Q     Thank you.

6             MR. BRADY: With that, your Honor, we move that  
7     the testimony that has been filed on e-docket be  
8     admitted into the record noting the one correction  
9     that Mr. Stutsman just discussed.

10            JUDGE DOLAN: Any objection?

11            MR. BERNET: No objection.

12            JUDGE DOLAN: ComEd -- ICC Exhibit 10.01  
13     Corrected and --.

14            MR. BRADY: 10.0 Correct.

15            JUDGE DOLAN: Oh. 10.0 Corrected. I'm sorry.  
16     And then ICC Staff 10.1 Attachment in four parts  
17     along with the correction that was just noted on the  
18     record will be admitted into the record.

19            MR. BRADY: Thank you, your Honor.

20                     (Whereupon, ICC Staff  
21                     Exhibit No. 10.0 and 10.1  
22                     were admitted into evidence.)

1           MR. BRADY:   And with that we tender

2   Mr. Stutsman for cross-examination.

3                   CROSS-EXAMINATION

4                   BY

5                   MR. BERNET:

6           Q     Good afternoon, Mr. Stutsman.   How are you?

7           A     Pretty good.   Yourself?

8           Q     Good.   Good.

9                   My name is Richard Bernet.   I'm one of  
10   the lawyers for ComEd.   I just a few questions for  
11   you.

12                   You're the manager of the Commissions  
13   Reliability Assessment program; is that right.

14          A     Correct.

15          Q     And one of your responsibilities or your  
16   main responsibility is to assess the performance of  
17   Illinois utilities from a reliability perspective?

18          A     Principally ComEd.

19          Q     Principal ComEd?

20                   And you're also responsible for  
21   monitoring customer satisfaction too; is that  
22   correct.

1           A     In relation to the ComEd assessment, yes.

2           Q     Yeah. That's what I'm referring to.

3                     You recommend no adjustments to  
4 ComEd's revenue requirement proposed in this case;  
5 isn't that right.

6           A     That's correct.

7           Q     In connection with your testimony, did you  
8 review the direct, rebuttal and surrebuttal testimony  
9 of Frank Clark, ComEd's chief executive officer?

10          A     I scanned it. I don't know if that would  
11 qualify as a review, but I read portions of it, yes.

12          Q     And did you review the direct, rebuttal and  
13 surrebuttal testimony of Mr. Costello, ComEd's chief  
14 operating officer?

15          A     Yes.

16          Q     And did you review the testimony of David  
17 DeCamplie, ComEd's VP of asset investment strategy?

18          A     Like I said before, I scanned it and it  
19 might qualify that as review, yes.

20          Q     Attached to Mr. DeCamplie's testimony is  
21 ComEd Exhibit 4.1. It was a DVD. Did you very view  
22 that?



1           A     Yes, I did.

2           Q     You're the first one so far.

3           A     It was very professional looking.

4           Q     And you agreed with everything in there;  
5 right?

6                         Withdrawn.

7                         Can you tell us, there are statistics  
8 that relate to an electric utilities performance from  
9 a reliability perspective. Can you tell us what  
10 those statistics are.

11          A     Well, statistics that we had focused on in  
12 the assessment report, which I assume you're  
13 referring to, the CAIDI. The CAIDI and the SAIFI are  
14 NECs to major reliability.

15          Q     And when you say SAIFI, can you explain  
16 what that means? What those acronyms -- what the  
17 letters mean?

18          A     Well, it's an indicator of the frequency of  
19 interruptions where, for SAIFI, the denominator is  
20 the total number of customers as opposed to CAIDI,  
21 which would be the same thing, except the denominator  
22 is the customers who have experienced outages.

1           Q     And does that relate to the duration of the  
2     outages?

3           A     That would be CAITI.

4           Q     Okay.

5           A     I thought that's what you were talking  
6     about.

7           Q     When you say SAIFI, that's S-A-I-F-I; is  
8     that correct?

9           A     Yeah. And I might have said CAITI and I  
10    meant to say kV. Sometimes I get -- it's hard to  
11    keep up with the acronyms sometimes.

12          Q     And so is it fair to say that the SAIFI  
13    statistics relate to the frequency of the outages  
14    that a utility would have?

15          A     Correct.

16          Q     And the CAITI indices would relate to the  
17    duration of outages?

18          A     Correct.

19          Q     Would you consider maintaining reliability  
20    to be one of the most important obligations that  
21    ComEd has?

22          A     Correct.

1           Q     Do you recall reading Mr. Clark and  
2     Mr. Costello's testimony that they consider keeping  
3     lights on to be ComEd's main purpose?

4           A     I recall that in Mr. Costello's testimony,  
5     and I'm not sure if the same expression was used in  
6     Mr. Clark's or not.

7           Q     Okay.  Would you agree with me that,  
8     generally, costs to build new facilities have  
9     increased since 2001?

10          A     I would guess probably with inflation.

11          Q     And would you agree with me that expenses  
12     associated with maintaining the ComEd electric system  
13     had generally increased since 2000?

14          A     The expenses that they reported, yes.

15          Q     Now, Mr. Costello testifies that between  
16     2001 and 2004 residential demand rose at  
17     approximately 2 percent per year, and between 2000  
18     and 2004 new housing rose in Chicago and the Chicago  
19     area by about 15 percent?  Is that generally  
20     consistent with your understanding of what's occurred  
21     in the ComEd's service territory?

22          A     In general I would say yes.

1           Q     Mr. Costello also testified that the demand  
2     for electricity and the number of customers in the  
3     ComEd service territory has risen steadily since  
4     2001? Is that consistent with your understanding?

5           A     In a general way, yes.

6           Q     And would you agree that customers demand  
7     greater reliability today than they did in 2001?

8           MR. BRADY: Objection. Lack of foundation.  
9     You haven't proven about whether he was performing in  
10    the same role in 2001.

11   BY MR. BERNET:

12          Q     I'm just asking for your general  
13    understanding.

14          JUDGE DOLAN: I'm going to overrule the  
15    objection based on that.

16          THE WITNESS: So your question specifically is,  
17    are customers demanding greater reliability today  
18    than they did in 2001?

19   BY MR. BERNET:

20          Q     Yeah, generally.

21          A     I don't know if that's true.

22          Q     Would you agree that ComEd has improved

1 reliability over the last six years?

2 A Yes.

3 Q Would you also agree that ComEd has  
4 improved in terms of -- strike that.

5 Would you also agree that ComEd has  
6 improved in the area of customer satisfaction over  
7 the last few years.

8 A Yes. The numbers indicate that.

9 Q So fewer complaints from customers, that's  
10 what's in your report; right?

11 A Correct.

12 Q And significant customers are seeing no  
13 interruptions?

14 A Well, the numbers speak for themselves in  
15 the report, that more customers are experiencing no  
16 interruptions.

17 Q And just so the record is clear, the report  
18 that we've been referring to is the Illinois Commerce  
19 Commission Assessment of Commonwealth Edison Company  
20 Reliability Report and Reliability Performance for  
21 calendar year 2004?

22 A Correct.

1           Q     Which is attached as Attachment 10.1 to  
2 your testimony?

3           A     That is correct.

4           Q     And that's a report that was prepared by  
5 you or at your direction?

6           A     Correct.

7           Q     Would you say it's a fair assessment --  
8 withdrawn.

9                         When you reviewed Mr. DeCamplie's  
10 testimony, did you see in there where Mr. DeCamplie  
11 discusses that since 2001, ComEd has built five new  
12 substations in its service territory.

13          A     Yes, I saw that.

14          Q     And would you agree with me that those --  
15 the construction of those substations have enhanced  
16 reliability in ComEd's service territory?

17          A     I would agree that they should. I haven't  
18 done an analysis.

19          Q     No, I understand. I'm just asking you  
20 generally about it; that a new substation on the  
21 system would enhance -- would typically enhance  
22 reliability. You'd agree with that; right?

1           A     Yes.

2           Q     Are you familiar with the supervisory,  
3 control and data acquisition --?

4           A     Yes.

5           Q     -- program that ComEd has?

6           A     Oh, with their program?

7           Q     Yes.

8           A     To some extent. I'm familiar with the very  
9 old systems that I actually worked on but. . .

10          Q     Would you agree that a fair assessment of  
11 the report that's attached to your testimony is that  
12 while ComEd has improved reliability in recent years,  
13 there is still more work to be done?

14          A     Yes.

15          Q     And, in fact, staff makes three  
16 recommendations in that report; doesn't it?

17                   I think it's on the last page.

18          A     That's correct. Page 30.

19          Q     And the three recommendations are, Continue  
20 its focus on improving customer service, Continue  
21 improving its vegetation management program, and  
22 Address the concerns of staff and vegetation

1 management report and Inspect insulating oil levels  
2 of substation equipment as appropriate and make  
3 adjustments as necessary?

4 Can you tell us what you mean by  
5 inspect insulated oil levels of substation equipment.

6 A I mean -- all right. I want to emphasize  
7 that when people are in substations that they  
8 actually check the oil levels at oil gauges. And if  
9 they see problems, to bring that to the attention of  
10 the appropriate people.

11 Q And so do you think that the inspections in  
12 the past have been insufficient?

13 A There have been times in the past when I  
14 worked at substations and had noted quite a few low  
15 oil levels or very low oil levels. And in one case,  
16 I was at a substation that I can't recall the name of  
17 it but it's across the river from Jefferson where  
18 there was a 38 -- 138 kV breaker where the oil level  
19 that we observed was so low in the bushings that we  
20 were concerned for ourselves because we just couldn't  
21 see anything, any indication. So to make a long  
22 story short, yes.



1           Q     And what would happen if the oil is not in  
2     a sufficient level or if it's leaking? I mean,  
3     what's the implication?

4           A     Especially in bushings because there's --  
5     they contain such a small volume of oil, if you don't  
6     maintain the oil levels, you could have a  
7     catastrophic failure, which could result in something  
8     that would appear like an explosion.

9                     And then with oil circuit breakers,  
10    you have the problem if you lose a bushings and it  
11    takes out the breaker, then you have burning oil in  
12    your yard, which then creates more problems. An SS-6  
13    breaker would be a little better in such a situation  
14    because then you wouldn't be burning oil.

15          Q     How many substations does ComEd have in its  
16    service territory, if you know? Just ballpark?

17          A     About 805. And then there's probably 12,  
18    13, maybe 1400 customer substations.

19          Q     Would you say that corrective and  
20    preventative maintenance are the two primary areas  
21    that affect reliability?

22          A     Including vegetation management with that,

1     which really would be preventative and corrective  
2     maintenance, yes.

3           Q     And while we're talking about vegetation  
4     management, ComEd has attempted to be on a four-year  
5     tree trimming cycle in the last few years; is that  
6     right?

7           A     Since 2000, they have been saying that they  
8     are a four-year tree trimming cycle.

9           Q     And you believe that ComEd slipped to a  
10    five-year tree trimming cycle last year?

11          A     I don't believe I said that. I think my  
12    concern is that they haven't sustained a four-year  
13    cycle at a level of quality control that they should  
14    be striving for.

15          Q     And it'll take more resources on ComEd's  
16    behalf to do that?

17          A     Well, it could take either more resources  
18    or reallocate existing resources or doing it just  
19    more efficiently. But, I mean, it's something -- a  
20    combination of those three.

21          Q     And we talked about corrective and  
22    preventative maintenance. ComEd has backlogs of

1     those currently; doesn't it?

2                     Backlogs and work orders for  
3     corrective and preventative maintenance.

4             A     Correct. I think if you're referring to  
5     what I had noted in Section 10. But in general --.

6             Q     Right. Right. Section 10, Pages 28 and  
7     29?

8             A     Correct.

9             Q     Would you agree that ComEd is seeking a  
10    rate increase because it needs additional money to  
11    continue on the path of improving reliability in  
12    customers?

13            A     I agree that that's what they say they are  
14    doing.

15            Q     Well, do you believe that ComEd needs a  
16    rate increase to accomplish that?

17            MR. BRADY: I'm going to object.

18            MR. BERNET: Withdrawn.

19    BY MR. BERNET:

20            Q     You agree that ComEd's ability to continue  
21    to invest in its system is directly related to the  
22    result in this case as Mr. Costello testified?

1           A     What again are you asking if I agree to?

2           Q     ComEd's ability to continue to invest in  
3     its system is directly related to the result of this  
4     case?

5           A     I don't know if I agree with that.  I don't  
6     think so.

7           Q     Do you agree that ComEd should recover its  
8     reasonable and prudent costs in this case?

9           MR. BRADY:  I guess I'll object again since  
10    Mr. Stutsman isn't providing any testimony regarding  
11    actual rates impact.  He's just talking about  
12    reliability.

13          JUDGE DOLAN:  I'll sustain it.

14    BY MR. BERNET:

15          Q     Well, let me ask you this:  Do you agree  
16    that ComEd needs to continue investing in its system  
17    to maintain reliability?

18          A     I would agree that they need to be either  
19    striving for more efficiency or -- which would be  
20    investing, I guess, in greater efficiencies or  
21    reallocating monies that are currently spending or it  
22    needs to be spending more.

1           Q     You know, Mr. Costello testified that a  
2     rate reduction would ultimately have a negative  
3     impact on reliability and a negative impact on  
4     customers. You saw that testimony?

5           A     Yes, I think so.

6           Q     And he testified that ComEd may have to  
7     relax its planning standards if it received a rate  
8     decrease?

9           A     Yeah, I believe -- I recall seeing that  
10    someplace.

11          Q     You disagree with that?

12          A     That they would have to relax their  
13    planning standards?

14          Q     Yes.

15          A     I do not believe they should relax their  
16    planning standards under these circumstances.

17               MR. BERNET: Nothing further.

18               MR. BRADY: Just two minutes.

19               JUDGE DOLAN: Yes.

20                               (Whereupon, a brief  
21                               recess was taken.)

22               MR. BRADY: We have no redirect.

1 JUDGE DOLAN: All right. Thank you,  
2 Mr. Stutsman.

3 We're going to go ahead and take a  
4 lunch break then, and we will reconvene in Room 808  
5 at 1:00 o'clock.

6 (Whereupon, a lunch  
7 recess was taken.)

8 JUDGE DOLAN: All right. We're ready.  
9 Go back on the record.

10 Staff, are you ready to present your  
11 next witness?

12 MR. FEELEY: Yes. At this time, staff will  
13 call Michael McNally.

14 JUDGE DOLAN: Mr. McNally, do you want to raise  
15 your right hand, please.

16 (Witness sworn.)

17 JUDGE DOLAN: You have to keep your voice up.  
18 Go ahead, counsel. Proceed.

19 MR. FEELEY: Mr. McNally has two pieces of  
20 testimony. His direct testimony is marked for  
21 identification as ICC Staff Exhibit 5.0. It has  
22 Schedules 5.1 through 5.10 attached. And this

1 testimony was filed on December 23rd, 2005.

2 JUDGE DOLAN: Wait. His Schedules were, you  
3 said, 5.1 through --.

4 MR. FEELEY: Schedules 5.1 to 5.10.

5 JUDGE DOLAN: All right.

6 MR. FEELEY: And that's his direct testimony.

7 His rebuttal testimony is marked for  
8 identification as Staff Exhibit 16.0. There's three  
9 schedules attached to that, Schedules 16.1 through  
10 16.3. And the rebuttal testimony was filed on  
11 February 27, 2006.

12 JUDGE DOLAN: Any objection?

13 MS. POLEK-O'BRIEN: No objection.

14 JUDGE DOLAN: All right. ICC Staff Exhibit 5.0  
15 along with Schedules 5.1 through 5.10 will be  
16 admitted into the record. And ICC Staff Exhibit 16.0  
17 along with Schedules 16.1 through 16.3 will also be  
18 admitted into the record.

19 (Whereupon, ICC Staff  
20 Exhibit No. 5.0 and 16.0  
21 were admitted into evidence.)

22 MR. FEELEY: Mr. McNally is available for

1 cross-examination.

2 JUDGE DOLAN: Okay.

3 (Witness previously sworn.)

4 MICHAEL McNALLY,

5 having been called as a witness herein, after having  
6 been first duly sworn, was examined and testified as  
7 follows:

8 CROSS-EXAMINATION

9 BY

10 MR. JOLLY:

11 Q Mr. McNally, my name is Ron Jolly. I'm an  
12 attorney with the City of Chicago. Good afternoon.

13 I'd like to start at Page 2 of your  
14 rebuttal testimony and in particular Lines 25 through  
15 27. And there you discuss Dr. Hadaway's testimony  
16 regarding average allowed returns on common equity  
17 for the years 2004 and 2005; is that correct.

18 A Yes.

19 Q And then going over to Page 3 at Lines 36  
20 through 39, starting on Lines 36, you state -- well,  
21 actually on 35, Specifically as I explained in my  
22 direct testimony, any attempt to assess the



1 appropriate return in this proceeding via comparison  
2 to the authorized returns Dr. Hadaway cites is of no  
3 value since he did not identify all critical factors  
4 including the relative risk of the utilities involved  
5 in those return decisions.

6 Did I read your testimony accurately.

7 A Yes.

8 Q And in your testimony there on Page 3,  
9 you're referring back to the decisions that  
10 Dr. Hadaway referred to, which is discussed again at  
11 Page 2, Lines 25 through 27 of your rebuttal  
12 testimony?

13 A Yes.

14 Q Okay. Did you review Dr. Hadaway's  
15 surrebuttal testimony?

16 A Yes, I did.

17 Q I'm going to show you what was included in  
18 Dr. Hadaway's surrebuttal testimony as ComEd  
19 Exhibit 38.1.

20 MR. JOLLY: This has not been admitted yet. Do  
21 you want me to mark it as an exhibit?

22 JUDGE DOLAN: Are you planning on trying to

1 admit into the record?

2 MR. JOLLY: I assume it will be admitted  
3 through Dr. Hadaway.

4 MS. POLEK-O'BRIEN: Unless the City objects, it  
5 will.

6 MR. JOLLY: No.

7 JUDGE DOLAN: Just go ahead.

8 BY MR. JOLLY:

9 Q Now, are you familiar with this exhibit?

10 A Yes.

11 Q And do you recognize this from  
12 Dr. Hadaway's surrebuttal testimony?

13 A Yes.

14 Q And to the right side, we have a shaded  
15 portion on this graph that describes -- and at the  
16 top it says, 19 orders at 10.5 percent and at 2000.  
17 And then in the middle of the shaded portion it says,  
18 2004 through 2005 approved ROEs. Is that accurate?

19 A Yes.

20 Q And -- now, would you agree that the data  
21 underlying that portion of Exhibit 38.1 is the data  
22 you referred to at Lines 36 through 39 of your

1       rebuttal testimony at Page 3?

2           A     I believe so.

3           Q     Okay.  So in your opinion, the data  
4       underlying that portion of the graph is of no value?

5           A     It can't be used to set cost of capital.  
6       It can only be used as a very broad comparison.

7           Q     Okay.  I would like to next to talk about  
8       BETA, Page 22 through 23 of your rebuttal testimony.

9                       Can you tell me what BETA is.

10          A     BETA measures the relationship between the  
11       risk of accompany as it relates to risk of overall  
12       market.

13          Q     And the overall risk of the market is  
14       considered to be 1.0; is that right?

15          A     Yes.

16          Q     And that's the average risk of all  
17       businesses that are in the market?

18          A     I believe that's true.

19          Q     Okay.  And would you agree that companies  
20       with BETAs lower than 1 are considered to have lower  
21       risk than the overall?

22          A     Yes.

1           Q     And companies with BETAs greater than 1 are  
2     considered to have excellent market risk?

3           A     Can you repeat that question.

4           Q     Companies with BETAs greater than 1 are  
5     considered to have risk greater than the overall  
6     market?

7           A     Yes.

8           Q     Now, could you turn to Pages 6 through 7 of  
9     your rebuttal testimony. And is it true there -- are  
10    you there?

11          A     Uh-huh.

12          Q     Okay. Is it true there that you criticizes  
13    Dr. Hadaway's use of a nominal GDP as his growth  
14    rates and his DCF analysis?

15          A     Yeah.

16          Q     And going to Page 7, Line 125, as I  
17    understand your testimony, part of your criticism is  
18    that utilities are below average growth companies; is  
19    that right?

20          A     Yes.

21          Q     And then in Line 128, you also state that  
22    utilities are below average in risk?

1           A     Yes.  That's -- that feeds into the growth.

2           Q     Okay.  And by being below average in risk,

3     does that mean that generally utilities have BETAs

4     less than 1?

5           A     Yes.

6           Q     Now, if you could turn to your direct

7     testimony at Page 16, Line 306, and the lines before

8     that.  Isn't it -- is it true there that you

9     calculate a -- the raw BETA for the comparable sample

10    you selected for your GCF analysis?

11          A     Yes.

12          Q     And is it true that after calculating a raw

13    BETA you adjust the BETA by increasing it?

14          A     Yes.

15          Q     And that's shown on Line 306?

16          A     Yes.

17          Q     And the effect of adjusting it is to move

18    the BETA you use closer to a BETA of 1.0?

19          A     For BETA below zero, it -- either way, it

20    will move them up if they're below BETA; down -- up

21    if they're below 1 and down if they're above 1.

22          Q     And so in other words, it makes the BETA

1     you use closer to the overall risk of the market than  
2     the raw BETA would suggest?

3             A     If the BETA was adjusted toward 1.0, which  
4     is the above market, yes.

5             Q     If you could now turn to Page 16 of your  
6     rebuttal testimony. And beginning at Line 310, you  
7     criticize Mr. Bodmer's approach of estimating ComEd's  
8     cost of equity by inferring it from the weighted  
9     average cost of capital calculated by Morgan Stanley;  
10    is that correct?

11            A     Yes.

12            Q     Now, have you ever worked for an investment  
13    bank?

14            A     No, I have not.

15            Q     Have you ever done consulting services that  
16    provide consulting services for an investment bank?

17            A     No, I have not.

18            Q     And at Lines 319 through 321, you state  
19    that one of your criticisms of Mr. Bodmer's approach  
20    is that -- and I quote -- We do not know if his cost  
21    of equity estimate is the same as that calculated by  
22    the investment bankers.

1                   Is that right.

2           A     Yes.

3           Q     I'd like to show you what was previously  
4 marked in this case as ComEd Cross Exhibit 6.

5                   Have you seen that document.

6           A     Yes, I believe I have.

7           Q     And is it true that this was initially  
8 attached to the surrebuttal testimony of Dr. Hadaway?

9           A     I believe that's where I've seen it.

10          Q     And have you read this document?

11          A     Yes, I have.

12          Q     And is it true that it's a letter from  
13 Lehman Brothers from a -- I'm guessing on the  
14 pronunciation.

15               MR. RIPPPIE:  Sauvage.

16               MR. JOLLY:  Sauvage?

17   BY MR. JOLLY:

18          Q     Okay.  Joseph G. Sauvage to Robert  
19 McDonald, senior vice president and CFO and treasurer  
20 of Commonwealth Edison Company?

21          A     Yes, it appears to be.

22          Q     Now, your recommended cost of equity is

1     10.19 percent; is that right?

2             A     Yes.

3             Q     And Mr. Bodmer's recommended cost of equity  
4     is 7.75 percent?

5             A     Yes.

6             Q     Now, if you look at ComEd Cross Exhibit 6  
7     at Page 3, is it true that Mr. Sauvage states that,  
8     In conclusion, the differences in purpose and  
9     methodology is why, from a practical matter,  
10    regulatory authorized ROEs are typically 300 or more  
11    basis points more than the discount rates used in  
12    investment bank fairness opinions.

13                         Did I read that correctly.

14             A     Yes.

15             Q     Now, if we subtracted Mr. Sauvage's 300  
16    basis points from your recommended cost of common  
17    equity, would the result be 7.19 percent?

18             A     If you subtracted 300 basis points from  
19    10.19, you'd get 7.19 percent.

20             Q     And that result is lower than the return in  
21    common equity that Mr. Bodmer's is recommending in  
22    this case?



1           A     That is true.

2           Q     Now, do you think the Commission should be  
3     interested in the cost of common equity calculated by  
4     Lehman Brothers as part of its services for Exelon in  
5     the Exelon/PSEG merger for purposes of this case?

6           MR. FEELEY:   Could you restate the question --  
7     or what was the question again?

8     BY MR. JOLLY:

9           Q     For purposes of this case, do you think the  
10    Commission should be interested in the cost of common  
11    equity calculated by Lehman Brothers as part of its  
12    services provided in the Exelon/PSEG merger?

13          A     They may be interested in it.  I don't know  
14    that they can use it directly for measuring cost of  
15    equity.

16          MR. JOLLY:   That's all I have.  Thank you.

17          JUDGE DOLAN:  Thank you.

18                   CROSS-EXAMINATION

19                   BY

20                   MS. POLEK-O'BRIEN:

21          Q     Good afternoon, Mr. McNally.  Anastasia  
22    O'Brien.  I'm here on behalf of ComEd.

1                   BETAs measured volatility; correct.

2           A     Yes.

3           Q     When the market looks at ComEd to determine  
4     what its cost of capital is. Is it fair to say that  
5     the market will probably, you know, have in mind the  
6     sorts of returns that are allowed by other Commission  
7     in other places?

8           A     It's possible that they would like at a lot  
9     of returns. Presumably they would look at a lot of  
10    returns with comparable companies.

11          Q     One of the things that the Commission has  
12    to do when they're determining the revenue  
13    requirement, of course, is set the cost of capital;  
14    right?

15          A     Can you repeat that.

16          Q     One of the things that the Commission has  
17    to do when they're determining the revenue  
18    requirement is determine the cost of capital; right?

19          A     Yes.

20          Q     And the capital basically is two  
21    components, debt and equity; right?

22          A     It could also have other, but in this case;

1     yes.

2             Q     There's a cost associated with debt and  
3     there's a cost associated with equity; right?

4             A     Yes.

5             Q     The cost of debt is usually relatively  
6     simple to determine because it's usually either  
7     stated on the face of the debt instruments or you can  
8     derive it from the face of the debt instruments;  
9     right?

10            A     That's true.

11            Q     Equity is a little different, though,  
12     because the actual cost of the equity isn't stated in  
13     any particular place; right?

14            A     That is correct.

15            Q     And one of the things the Commission has  
16     got to do then is figure out exactly what the cost of  
17     equity is?

18            A     Uh-huh. Yes.

19            Q     It needs to make sure that it gets it right  
20     because what the Commission does is going to impact  
21     the ability of the company to get the capital it  
22     needs to carry on its business; right?

1           A     That's true.

2           Q     If the capital -- if the cost of the  
3     capital and the cost of the equity or either or both  
4     is set too low, the resulting revenue requirement  
5     won't allow the company to recovery its actual cost  
6     of providing service; right?

7           A     Yes, that's true.

8           Q     All right. Now, the fact that you can't  
9     look out in the market and, you know, pick up a paper  
10    or look at line in the Wall Street Journal to see  
11    what the cost of equity is, that doesn't mean that  
12    it's any less of a cost than the other cost of  
13    providing service; right?

14          A     Yes.

15          Q     It's set by the market; right?

16          A     Yes.

17          Q     Just like the market sets prices for other  
18    things; right?

19          A     Yes.

20          Q     Just like it sets the price of pencils?

21          A     Presumably.

22          Q     Corn?

1           A     Presumably.

2           Q     Honda Civics?

3           A     Yes.

4           Q     It has a lot to do with supply and demand;  
5 right?

6           A     Yes.

7           Q     And it's also about risk too; right?

8           A     Yes.

9           Q     Now, neither ComEd nor any other company  
10 can tell the market what the cost of the capital is  
11 going to be; right?

12          A     Are you saying that the company cannot  
13 dictate what its cost of capital is?

14          Q     Yes.

15          A     That's correct.

16          Q     And the Commission can't dictate what the  
17 cost capital is going to be; right?

18          A     The Commission converts it from market  
19 data.

20          Q     Right. The Commission can't tell the  
21 market it's going to be X; correct?

22          A     That's true.

1           Q     But now the market responds to what the  
2     Commission does if it cares to; right?

3           A     Yes.

4           Q     So if the cost of capital is set too low  
5     and resulting revenue requirement is therefore too  
6     low, the market may view the company as having  
7     greater risk than it had previously; right?

8           A     I don't know that it would view it as  
9     having greater risk, no.

10          Q     Well, the market would look at what the  
11     Commission approved and it would be lower than the  
12     market sees the cost to be; right?

13                     You don't think the market -- I'm  
14     sorry?

15          A     Yes. I mean, they can look at it and say  
16     this is our required earnings. Rate of return is 50  
17     percent, and the Commission has only granted 5  
18     percent. Yeah, it would be lower.

19          Q     And so then market would see that as a  
20     company not being allowed to recover its costs;  
21     right?

22          A     Yes.

1           Q     And if a company is not allowed to recover  
2     its costs, then there is more risk for the equity  
3     holders; right?

4           A     Well, at that point that was -- at the  
5     point that decision is made, it's already done.  It's  
6     a question of then the price will fall.  At that  
7     point the risk isn't really any greater to the equity  
8     holder.

9                     It's -- the price has fallen.  The  
10    risk is -- I guess that's inherent in any equity  
11    holders, you know, stake is, if the Commission should  
12    reduce their -- reduce the authorized return to a  
13    rate below what they thought it would be, the  
14    previous stockholders would lose value.

15          Q     Correct.  The price of the stock would go  
16    down; right?

17          A     Yes.

18          Q     That's one of the ways that the market sets  
19    the price of the capital; right?

20          A     Yes.

21          Q     All right.  Let's -- Mr. McNally, give me,  
22    please -- name for me a cost of equity that you

1     believe is clearly too low for ComEd in this  
2     proceeding.

3             A     I'm not sure I want to speculate.  I  
4     would -- obviously, I would think zero percent would  
5     probably be too low.

6             Q     And that wouldn't be speculation, would it?  
7     That would be a fact?

8             A     I think, pretty much.

9             Q     Because you're here testifying as an  
10    expert; right?

11            A     Yes.

12            Q     So in your expert opinion, would 5 percent  
13    be too low of the cost of equity for ComEd in this  
14    proceeding?

15            A     Well, in my opinion, anything below 10.19  
16    percent would be too low.

17            Q     So Mr. Bodmer's recommended cost of equity  
18    is too low in your opinion; correct?

19            A     Yes.

20            Q     Let's say that the Commission allowed -- I  
21    want to go to something that's clearly, clearly too  
22    low.



1                   Let's say the Commission allowed the  
2   cost of equity at 7 percent; okay?  Would you agree  
3   that's too low.

4           A     Yes.

5           Q     The market would probably react to that;  
6   correct?

7           A     Yes.

8           Q     And it would react to that by increasing  
9   the cost of capital, the cost of equity of ComEd;  
10  right?

11          A     No.  I believe its cost of equity would  
12  remain the same, and would reduce the price until --  
13  to the point where it required -- the expected return  
14  would be equal to the required return.

15          Q     It would reduce --?

16          A     The required return is price of the --  
17  well. . .

18          Q     What the market does -- what you're talking  
19  about is the market decreasing the cost of the stock  
20  of the equity that we're talking about; right?

21          A     Yes.  The price of the stock would drop.

22          Q     And when the price of the stock decreases,

1 the cost of the equity increases; right? That's how  
2 the market makes the adjustment?

3 A No.

4 Q Okay. So when the market deems that a  
5 company has more risk than it had before, the  
6 market's likely reaction is to reduce the cost of the  
7 price of the stock; right?

8 A Could you -- sorry.

9 Q Okay. You have a company on day one that  
10 has a risk of X. For whatever reason on day two, the  
11 risk of the company is, you know, X squared. Okay?

12 Let's assume that -- and let's assume  
13 that that's significant. The market -- and it's  
14 publicly traded. The market is going to make an  
15 adjustment to recognize that increased risk; correct.

16 A Yes.

17 Q Okay. The action that the market will  
18 probably take to factor in the additional risk is to  
19 decrease the price of the company's stock; right?

20 A Yes.

21 Q And by decreasing the price of the stock,  
22 the cost of the equity is increasing; right?

1           A     No.  The cost of the equity has increased  
2     and, therefore, they reduce the cost -- the stock  
3     accordingly.

4           Q     Okay.

5           A     It's not -- the cost doesn't --.

6           Q     So the cost increases and that drives the  
7     price down.  And so the market will reduce the price  
8     of the stock?

9           A     If the risk -- I mean, let me be clear that  
10    you're talking of two different -- you're -- two  
11    different scenarios.

12          Q     Yes.

13          A     With the X and X squared.

14          Q     Yes.

15          A     You're pricing two different amounts of  
16    risk.

17          Q     Exactly.

18          A     So it's essentially not the same company.  
19    I mean, on day two it's not same company.

20          Q     On day one, absolutely.  That's my  
21    scenario.

22          A     Okay.

1           Q     And that's your scenario too; right?

2           A     Yes.

3           Q     Okay.  The market -- when the market sets

4     the cost of equity, it basis that cost on what it

5     knows today and what its expectations for the future

6     are; right?

7           A     Yes.

8           Q     It doesn't matter whether the market's

9     expectations are rationale or not.  It's willing to

10    use those expectations when it sets the price; right?

11          A     Yes.  Correct.

12          Q     Let's say hypothetically that the market

13    decided that inflation is going to be 15 percent a

14    year for the next three years.  Is it fair to assume

15    that the market would price that expectation into all

16    publicly traded securities?

17          A     Yes.

18          Q     It doesn't matter whether those

19    expectations turn out to be right or wrong.  The

20    price still will have been set based on those

21    expectations; right?

22          A     Yes.

1           Q     All right.  What if hypothetically it turns  
2     out that the market is always wrong?  That doesn't  
3     mean that you can ignore its expectations; right?

4           A     That's true.

5           Q     Because the market is going to use those  
6     expectations, whatever they are, rational or not, to  
7     set the price; correct?

8           A     That's true.

9           Q     So the goal then of what we have to figure  
10    out and what the Commission has to figure out is what  
11    the expectations are; correct?

12          A     Yes.

13          Q     And then it needs simply to apply those  
14    expectations; correct?

15          A     Yes.

16          Q     When you have a company like ComEd that  
17    doesn't have much publicly traded stock, it's  
18    appropriate to use an sample of comparable companies  
19    to determine the cost of equity; right?

20          A     Yes.

21          Q     And you agree that in order for the sample  
22    to accurately lead to the cost of the subject

1     company's debt -- equity, the risk of the sample has  
2     to be the same; right?

3             A     Yes.

4             Q     And when you use the term "risk," you're  
5     talking about total risk; right?

6             A     Yes.

7             Q     And total risk includes operating risk and  
8     financial risk; right?

9             A     Yes.

10            Q     And operating risk is the risk that comes  
11    from the fundamental nature of the company's  
12    business; right?

13            A     Yes.

14            Q     And financial risk is risk that's  
15    associated with the way the company does its  
16    financing; correct?

17            A     Yes.

18            Q     The more debt financing in relation to  
19    equity the greater the risk to the equity holders;  
20    right?

21            A     If all is equal, yes.

22            Q     Now, in the past -- well, let me back up.

1                   You have previously provided testimony  
2   on cost of equity in Commission proceedings; right.

3           A     Yes.

4           Q     In the past when you've been faced with the  
5   Proxy, with the sample group, that had more risk than  
6   the utility, you've adjusted to recognize that  
7   difference; right?

8           A     Adjusted what?

9           Q     I was going to ask you that next, but you  
10   adjusted the cost of equity to recognize the  
11   difference; right?

12          A     I'm not certain I recall.  I've -- I'm not  
13   sure if I just -- I know I've adjusted -- I'm pretty  
14   sure I've adjusted the capital structure in the  
15   past -- in the past cases, but I'm not sure that I  
16   recall -- I may have.

17          Q     Do you remember testifying in the USIPS/UE  
18   case in 2003?

19          A     What docket numbers?

20          Q     Docket No. 02-0798, consolidated.

21          A     What other dockets with that?

22          Q     03-0008 and 03-0009.

1           A     Okay.

2           Q     And I've could got here a copy of the  
3     order, which prominently list your name as staff  
4     expert in cost of capital.   Beginning on Page 59 of  
5     the order.

6           MS. POLEK-O'BRIEN:   I'm sorry, may I approach  
7     the witness?

8           JUDGE DOLAN:   Sure.

9           MS. POLEK-O'BRIEN:   Thank you.

10          MR. FEELEY:   What are you referencing here?

11          MS. POLEK-O'BRIEN:   I'm just asking Mr. McNally  
12     if he recall testifying in this case.

13                         Feel free to --.

14          THE WITNESS:   I realize -- I know did I testify  
15     in this.   My recollection isn't perfect of exactly  
16     what I said in the case.

17     BY MS. POLEK-O'BRIEN:

18          Q     Well, interesting that you should say that  
19     because we actually have a record of what you did say  
20     for your reference.

21                         Let me direct your attention to the  
22     transcript from that docket on July 10th, and I'll



1 address your attention to Line -- Page 614 of the  
2 transcript. And you were questioned by the judge.

3 Questions and answers as follow:

4 Mr. McNally, determining capital  
5 structure for UE, you factor in a higher proportion  
6 of debt than what you UE really has; correct?

7 That's correct, the answer.

8 Question: And in estimating UE's cost  
9 of common equity, you took into consideration the  
10 fact that you assumed UE had higher proportion of  
11 debt; correct?

12 Answer: I'm sorry could you repeat  
13 that?

14 Question: Sure. When you estimated  
15 the common -- I'm sorry, when you estimated the cost  
16 of common equity for UE, you take into consideration  
17 in doing so your assumption that UE had the  
18 proportion of debt than it really has; correct?

19 Did I read that correctly.

20 A Yes.

21 Q It goes on:

22 Answer: Yes, my adjustment, my cost

1 of equity adjustment for UE was based on the imputed  
2 level of equity, which was 52.7 percent, I believe,  
3 rather than 59.55 percent. Then I calculated for  
4 actual equity level.

5 Do I have that correct.

6 A Yes.

7 Q Let's just go to the order here. I'm going  
8 to go to the conclusion of the order -- well, you  
9 know what? Let me just ask a question.

10 Do you agree that when there is a  
11 greater proportion of equity in the capital structure  
12 for the sample group than the company at issue has,  
13 that the risk does not allow -- that the differential  
14 risk doesn't allow the comparable group resulting in  
15 an estimate of an utility's actual cost of equity.

16 A Could you repeat that back.

17 Q Let me try do it with less words.

18 Do you agree that when a sample group  
19 is used to set the cost of equity or to determine the  
20 cost of equity and the equity or the portion of  
21 equity in the capital structures of the sample group  
22 is greater than the utility has that was setting the

1 cost of equity for, that the utility has a greater  
2 risk than the sample group and, therefore, the cost  
3 of equity attributable to the sample group is  
4 typically lower than the utility's cost of equity  
5 because of its greater risk.

6 A If you're making an apples to apples  
7 comparison.

8 JUDGE DOLAN: While you're taking a break, I  
9 want to go off the record for just one second.

10 (Whereupon, a discussion  
11 was had off the record.)

12 BY MS. POLEK-O'BRIEN:

13 Q The way I understand it in the USIPS/UE  
14 case, there was a difference of 10 percentage points  
15 in the common equity ratio of the company and the  
16 sample. Does that sound right to you.

17 A The gas sampling was approximately 57  
18 percent total net, and the approved capital structure  
19 approximately 45 percent total.

20 Q What was UE's common equity ratio?

21 A The approved -- again, I don't -- I'm just  
22 reading this. I don't remember the numbers from that

1 case specifically, but just reading it, the approved  
2 structure for the UE consists of approximately 45  
3 percent total debt.

4 Q And what is the percentage of common  
5 equity?

6 A 53 percent.

7 Q And then what is the average percentage of  
8 common equity for the sample group?

9 A Presuming that was based on the gas cycle,  
10 which I don't recall off the top of my head, the gas  
11 sample that was used when used, I presume, had a  
12 total equity ratio of approximately 43 percent.

13 Q And because of that differential, the order  
14 reports that you recommended and the Commission  
15 accepted an adjustment; is that correct?

16 A As I understand from what you showed me  
17 earlier, the adjustment was made to the capital  
18 structure.

19 Q Well, the adjustment has to made either in  
20 the capital structure or the cost of equity; right?

21 A Well, again, presuming that you're sample  
22 does not mention the target company.

1           Q     You have to --?

2           A     One or the other or both.

3           Q     Okay. Thank you.

4                     Now Ms. Kight talks about the capital

5     structure that staff is advocating in this case;

6     right.

7           A     Yes, she testifies to that.

8           Q     The capital structure includes only 37.11

9     percent equity; right?

10          A     That's my recollection.

11          Q     And as -- and that equity is lower than the

12     equity ratios of all of the companies in your sample

13     group?

14          A     On an individual basis?

15          Q     Yes.

16          A     I don't know.

17          Q     Are familiar with Dr. Hadaway's testimony?

18          A     Yes, I am.

19          Q     Did you review his rebuttal testimony?

20          A     Yes, I did.

21          Q     And in his rebuttal testimony, he talks

22     about the capital structures of your sample group;

1 right?

2 A Yes.

3 Q Exhibit 21.2 to his testimony.

4 (Change of reporters.)

5 Q Exhibit 21.2 of his testimony lists the  
6 common equity, long-term debt and preferred stock  
7 ratios of your example, correct?

8 A It lists his understanding of it.

9 First of all, I disagree with this  
10 calculation of common equity ratio because the ratios  
11 he presents do not include short-term debt.

12 Q With that exception, you don't have any  
13 basis for disagreeing with this, do you?

14 A There can be a significant exception.

15 I have calculated an average common  
16 equity ratio to be 45 percent as opposed to  
17 48 percent.

18 Q Okay. Do you agree that -- do you have any  
19 reason to distribute that these are the ratios as  
20 reported in Value Land Investment Survey, Electric  
21 Utility (East) dated December 2, 2005, (Central)  
22 December 30, 2005 (West) November 11, 2005, Natural

1 Gas Distribution, December 16, 2005?

2 A No.

3 Q And that's the kind of source that the  
4 market uses to get information about public utility  
5 companies, right?

6 A Yes, I am not sure it uses it in that exact  
7 manner, but...

8 Q I want to hand you what we're going to ask  
9 the court reporter to mark as ComEd Cross-Exhibit 14.

10 (Whereupon, ComEd Cross-Exhibit  
11 No. 14 was marked for  
12 identification.)

13 MS. POLEK-O'BRIEN:

14 Q What I have just handed to you, Mr.  
15 McNally, is a graph entitled, Sample Company Capital  
16 Structure.

17 It uses as its source the same  
18 document that we just -- the same documents we just  
19 talked about to form the basis for the schedule in  
20 Dr. Hadaway's testimony.

21 Do you have any reason to dispute that  
22 the placement of the dots does not represent the

1 values as shown in that schedule?

2 A Again, as I noted, those dots, I presume,  
3 represent capital structures that do not include  
4 short-term debt.

5 So to the extent that short-term debt  
6 is underneath the capital structure, debt to ratio  
7 again would be somewhat lower. Again, with the  
8 average line that you have marked 48.8 percent being  
9 approximately 45.19 percent.

10 Q Your testimony doesn't propose any  
11 adjustment to either the cost of equity or the  
12 capital structure to recognize a differential of  
13 financial risk between ComEd and the sample group,  
14 correct?

15 A That's correct.

16 MS. POLEK-O'BRIEN: I have no more questions.

17 Thank you.

18 JUDGE DOLAN: Any redirect?

19 MR. FEELEY: Yeah, can we have 10 minutes or  
20 something?

21 JUDGE DOLAN: Sure.

22 (Whereupon, a recess was taken.)



1 REDIRECT EXAMINATION

2 BY

3 MR. FEELEY:

4 Q Mr. McNally, do you recall Ms. O'Brien was  
5 asking you a series of questions about the debt and  
6 equity ratios of the Company's versus those of the  
7 ones in your sample.

8 Do you recall that?

9 A Yes.

10 Q And she asked you whether you made an  
11 adjustment for any difference between the two.

12 Do you recall that?

13 A Yes.

14 Q And you responded that you did not make  
15 such an investment, correct?

16 A That's correct.

17 Q And why didn't you make such an adjustment?

18 A Such an adjustment is not necessary in this  
19 proceeding because the capital structure that is  
20 recommended by Staff includes TFIs.

21 And as Staff has repeatedly stated  
22 throughout its testimony, TFIs should not be in and

1 are not included by S&P in the capital structure used  
2 to assess the strength, the financial strength or  
3 risk of the Company.

4 Q And just for the Judge's benefit, what are  
5 TFIs?

6 A Transitional funding instruments.

7 MR. FEELEY: That's all I have.

8 JUDGE DOLAN: Any recross?

9 MS. POLEK-O'BRIEN: No more questions.

10 JUDGE DOLAN: Thank you, Mr. McNally.

11 Are you going to admit ComEd  
12 Cross 14?

13 MS. POLEK-O'BRIEN: Yes, I am.

14 I'm going to move for the admission of  
15 ComEd Cross-Exhibit 14.

16 JUDGE DOLAN: Any objection?

17 MR. FEELEY: No, objection.

18 JUDGE DOLAN: ComEd Cross-Exhibit No. 14 will  
19 be admitted into the record.

20 (Whereupon, ComEd Exhibit Cross  
21 No. 14 was admitted into  
22 evidence.)

1           MR. FOSCO: Staff would call its next witness  
2   Ms. Sheena Kight.

3                               (Witness sworn.)

4                       SHEENA KIGHT,  
5   called as a witness herein, having been first duly  
6   sworn, was examined and testified as follows:

7                       DIRECT EXAMINATION

8                       BY

9                       MR. FOSCO:

10           Q    Please state your name. Spell your last  
11   name for the record.

12           A    Sheena Kight; K-i-g-h-t.

13           Q    Ms. Kight, did you cause direct and  
14   rebuttal testimony to be prepared for this  
15   proceeding?

16           A    Yes, I did.

17           MR. FOSCO: Your Honors, in kind of accordance  
18   with the shortened procedures, I'll just proceed to  
19   identify the testimony filed on E-docket.

20                       ICC Staff Exhibit 4.1 through 4.3 were  
21   filed through E-docket on March 14, 2006. It's  
22   Document No. 166339.

1 JUDGE DOLAN: What were the exhibits?

2 MR. FOSCO: Schedules 4.1 to 4.3 and 4.0  
3 corrected.

4 JUDGE DOLAN: All right.

5 MR. FOSCO: And then on March 20, 2006, ICC  
6 Staff Exhibit No. 15.0, second, corrected was filed  
7 on E-docket as Document No. 166943.

8 BY MR. FOSCO:

9 Q Ms. Kight, do you have any corrections to  
10 either of those documents?

11 A Yes, I have one correction to Staff  
12 Exhibit 15.0 on Page 8 in Table 2 under the heading  
13 of Equity. And instead of 52 percent, it should be  
14 45.5 percent.

15 Q And that change is consistent with the  
16 other changes that were made in the body of your  
17 testimony?

18 A Yes, it is.

19 Q With that change, do you have any other  
20 changes?

21 A No, I do not.

22 Q And is your testimony contained in the

1 documents we previously identified true and correct  
2 to the best of your knowledge?

3 A Yes, it is.

4 MR. FOSCO: With that, your Honor, we would  
5 move for admissions of ICC Staff Exhibit 4.0  
6 corrected, including Schedules 4.1 through 4. 3 and  
7 ICC Staff Exhibit 15.0, second, corrected into  
8 evidence and tender Ms. Kight for cross-examination.

9 JUDGE DOLAN: Any objection?

10 MR. RIPPIE: None.

11 JUDGE DOLAN: ICC Staff Exhibit 4.0 corrected,  
12 along with Exhibits 4.1 through 4.3 will be admitted  
13 into the record and ICC Staff 15.0, second, corrected  
14 will also be admitted.

15 (Whereupon, ICC Exhibit  
16 Nos. 4.0, 4.1 4.3 and 15.0 were  
17 admitted into evidence.)

18 MR. FOSCO: Thank you.

19 CROSS EXAMINATION

20 BY

21 MR. REDDICK:

22 Q Ms. Kight, my name is Conrad Reddick. I

1 represent the Illinois Industrial Energy Consumers.

2 At your rebuttal testimony at Page 6,  
3 you reject the use of certain adjustments in the  
4 standard report of financial ratios credit metrics  
5 calculations to reflect transitional funding  
6 instruments; is that correct?

7 A Yes.

8 Q And the financial ratios that you are  
9 discussing there are the funds from operations and  
10 interest coverage ratio and the funds from operations  
11 to debt ratio?

12 A Correct.

13 Q When you calculated the ratios that you  
14 show in Rebuttal Table 2 -- I think that's the one  
15 you just corrected?

16 A Yes.

17 Q -- did you use as the funds for -- from  
18 operations the revenue streams from all operations of  
19 the Company?

20 A Yes.

21 Q Did you include, as well as the revenue  
22 streams from regulated utility operations, any other

1 revenue streams from the Company?

2 A Mine's based off of rate base that Staff  
3 proposed; funds from the rate base that Staff  
4 proposed.

5 Q So the funds that you took into account in  
6 your calculation are the revenues derived from the  
7 assets in the rate base that Staff proposed?

8 A Yes.

9 Q Okay. At the top of Page 7, I believe in  
10 the rebuttal testimony, I think you described the  
11 specific adjustments. You discuss at some length  
12 there the particular adjustments that you decided not  
13 to make, that you decided were inappropriate to make?

14 A These are the adjustments that S&P makes.

15 Q Okay. But --

16 A For transitional funding instruments.

17 Q Yes. And these are not adjustments that  
18 you made when you did your calculations?

19 A These adjustments are reflected in the  
20 calculations in Table 2.

21 Q You are much more accurate than I am.

22 They are in Table 2. But you found

1       them ultimately inappropriate for use for ratemaking?

2               A       I found that when they were excluded that  
3       the ratios produced metrics that were more consistent  
4       with a Triple B, low to middle benchmark. And when  
5       they were not excluded, they produced ratios that  
6       were consistent with an A minus triple B plus credit  
7       rating.

8                       And I didn't think it was necessary to  
9       adjust the capital structure based on the ratios that  
10      resulted from calculating the ratios with including  
11      the TFIs. I didn't adjust my capital structure based  
12      off those ratios.

13              Q       Okay. To be clear, the numbers shown in  
14      Table 2 of your rebuttal testimony, do reflect the  
15      adjustments that are in the standard report?

16              A       Yes.

17              Q       Are you familiar with the circumstances  
18      under which the transitional funding -- I'm sorry.

19                       Are you familiar with the  
20      circumstances under which the transitional funding  
21      instruments issued by ComEd were originally issued?

22              A       I'm vaguely familiar.



1           Q     Okay.  They were a part of the  
2     restructuring that ComEd undertook pursuant to the  
3     1997 legislation, correct?

4           A     Correct.

5           Q     And one aspect of ComEd's restructuring was  
6     the treatment of its generating assets, specifically,  
7     ComEd sold its fossil plants and transferred its  
8     nuclear generation stations?

9           A     That's my understanding.

10          Q     As a part of its sale of the fossil  
11     generating assets, are you familiar with the details  
12     of that transaction?

13          A     No, not entirely.

14          Q     Do you know that -- let me see, how can I  
15     ask you this.

16                     Are you familiar with ComEd's transfer  
17     of the assets to an affiliate for later sale to a  
18     third party?

19          A     The transfer that happened in 2001?

20          Q     I think it was before that.

21          MR. FOSCO:  Conrad, are you limiting your  
22     question to the fossil units at this point?

1           MR. REDDICK:   Yes, fossil units.

2           THE WITNESS:   No.

3   BY MR. REDDICK:

4           Q     Let me ask you this:   Would you accept  
5     subject to check that as described in ComEd's FERC  
6     Form 1 for calendar year 2000, the utility  
7     transferred 4.8 million fossil generating assets to  
8     an affiliate for later sale in exchange for a demand  
9     note and an interest-bearing note?

10          A     I'll accept that subject to check.

11          Q     Are you familiar with ComEd's cash flows in  
12     the test year 2003?

13          A     No, not entirely.   I have a vague idea of  
14     the cash flows, but I haven't looked at them  
15     specifically.

16          Q     Okay.   I'll ask it.   We'll see where it  
17     goes.

18                         Would you accept, subject to check  
19     that ComEd's 2004 FERC Form 1 reports a payment of a  
20     note from an affiliate in connection of the fossil  
21     plants in the amount of \$1,077 million?

22          A     Subject to check, I'll accept that.

1           Q     If that amount were included in the cash  
2     flows available to ComEd for the payment of TFIs and  
3     were included in your calculations, the financial  
4     ratio calculations, would you agree that there would  
5     be a significant change in those calculations, the  
6     results of the calculations?

7           A     My calculations for the ratios are based  
8     off of Staff's recommended rates base.

9           Q     I see.

10                     And if the revenues available were  
11     greater, the ratios would change, wouldn't they?

12          A     I'm not for sure what effect it will  
13     actually have on Staff's rates base.

14          Q     Well, if the funds from operations were  
15     larger than the funds from operations number that you  
16     use, the ratio would increase, wouldn't it,  
17     mathematically?

18          A     Yes.

19          Q     Did you do any calculations that assume  
20     that the TFIs were fully paid off, how the financial  
21     ratios would be in those circumstances?

22          A     No. I didn't look to -- I'm assuming you

1 are looking at 2009. No, I didn't look that far  
2 forward.

3 Q Because they will be paid?

4 A They will improve. The 340 million that is  
5 designated to pay the TFIs is no longer required to  
6 pay the TFIs when they are retired.

7 Q In what year?

8 A December 31, 2008 I believe is when they  
9 are retired.

10 Q And I believe you say in your testimony  
11 that it's your understanding that when ComEd sought  
12 approval to issue the TFIs, that the utility  
13 represented to the Commission that there would not be  
14 an adverse effect on Company's financial risk or  
15 credit standing?

16 A Yes, that's my understanding.

17 MR. REDDICK: Thank you.

18 Those are all the questions I have.

19 JUDGE DOLAN: Thank you.

20

21

22

1 CROSS EXAMINATION

2 BY

3 MR. RIPPIE:

4 Q Good afternoon, Ms. Kight.

5 My name is Glenn Rippie. I don't know  
6 if an appearance has been entered for me today. I'm  
7 told it has.

8 Despite what Mr. Fosco might have told  
9 you, I'm actually a nice guy.

10 You are not a CPA are you, Ms. Kight?

11 A No, I am not.

12 Q So you would not intend any of your  
13 testimony today to offer an opinion on the  
14 correctness of the accounting of a public  
15 corporation, would you?

16 A No, I wouldn't except to offer an opinion  
17 on that.

18 Q You are, however, the overall cost of  
19 capital and capital structure witness for Staff,  
20 right?

21 A Yes.

22 Q I'm going to ask you just two questions

1     about what Mr. Reddick asked you before I get into my  
2     own outline to make things clear.

3                     Mr. Reddick asked you to make an  
4     assumption about certain fossil assets.

5                     And I believe he asked you to assume  
6     that \$4.8 million was involved.

7                     Do you think it might be a better  
8     assumption to assume that it was 4.8 billion with a  
9     "B"?

10                    MR. REDDICK: I certainly would.

11                    THE WITNESS: I said subject to check, whatever  
12     is actually in the report would be correct.

13     BY MR. RIPPPIE:

14                    Q     Now, Mr. Reddick also asked you whether at  
15     the time of the retirement of the transitional  
16     funding instruments the ratios, the so-called FFO  
17     ratios would improve. And you answered  
18     mathematically they would.

19                    That, of course, assumes that all  
20     other things remain equal, right?

21                    A     Correct.

22                    Q     If I use the term "FFO" just as you have in

1     your testimony, you'll understand that to mean funds  
2     from operations?

3             A     Yes.

4             Q     Okay.  Now, you testify at Lines 40  
5     through 41 of your direct testimony that consumers  
6     are best served when the authorized rate of return on  
7     rate base equals the overall cost of capital.

8                     Do you agree, as well, that utilities  
9     have a right to recover a rate of return equal to  
10    their overall cost of capital?

11            MR. FOSCO:  And I assume you are not asking a  
12    legal opinion?

13            MR. RIPPIE:  Correct assumption.

14    BY MR. RIPPIE:

15            Q     As a matter of policy, I'll rephrase the  
16    question that way.

17                     Do you agree that in addition to it  
18    benefiting consumers utilities have that ability?

19            A     Yes.

20            Q     And would you agree that a proper rate of  
21    return for a regulated utility is one that is  
22    commensurate with returns and investments in other

1 enterprises having corresponding risks?

2 A Yes.

3 Q Would you agree that a proper rate of  
4 return for a regulated utility is one that is  
5 sufficient to assure confidence in its financial  
6 soundness?

7 A I think that the cost of capital for a  
8 utility should reflect what investors' expectations  
9 are for the equity portion and the debt, obviously,  
10 and the cost of the debt.

11 Q I'm asking you about the overall return.

12 My question is whether you agree or  
13 disagree that as a matter of policy the rate of  
14 return for a regulated utility should be set, quote,  
15 "sufficient to assure confidence in its financial  
16 soundness" end quote?

17 Would it help you, if I told you I was  
18 quoting a Commission order?

19 A Well, it's just the "confidence."

20 I think that statement is reasonable.

21 Q Within the ordinarily meaning of the words?

22 A Yes.



1 Q Fair enough.

2 Would you agree that a proper return  
3 for a regulated utility is one that respects its  
4 ability to attract capital at reasonable and  
5 competitive rates?

6 A Yes.

7 Q And would you also agree that the  
8 Commission in several past decisions has recognized  
9 that maintaining an investment grade rating is a  
10 minimum criterion for access to capital at reasonable  
11 and competitive rates?

12 A I'm not positive what the Commission has  
13 previously said in all orders about the minimum.

14 Q Okay. Well, would you agree that  
15 maintaining an investment grade rating is a minimum  
16 criterion for access to capital at reasonable rates?

17 A I think it is important that a utility  
18 maintain a good credit rating.

19 Q Now, is it correct that ComEd's former  
20 parent Unicom Corporation merged with PECO Energy  
21 Company on or about October 20th of the year 2000?

22 A That's my understanding.

1           Q     And is it also your understanding that that  
2     merger was consummated, and again, I'm not asking for  
3     a legal opinion just her understanding, pursuant to a  
4     notice that Company lodged with the Commission under  
5     Section 16.111 of the Act?

6           A     Yes.

7           Q     And your testimony makes no claim that  
8     there was any defect in the approval or the  
9     accounting of that merger, right?

10          A     That's correct.

11          Q     Now, after that merger closed, on the  
12     morning of October 21, 2000, we all woke up. And  
13     ComEd still owned the nuclear plants, right?

14          A     That's my understanding.

15          Q     And it still owned those nuclear plants for  
16     a significant period of time. Am I correct?

17          A     I believe it was three months.

18          Q     Fair enough. You answered my next  
19     question.

20                     Actually, like, maybe 91 days, right?

21          A     Give or take.

22          Q     Give or take.

1                   On the first day of 2001, ComEd  
2   transferred nuclear generating assets to a new  
3   entity, ultimately Exelon Generation, LLC; is that  
4   correct?

5           A     That's my understanding.

6           Q     And that transfer was consummated pursuant  
7   to another one of those 16.111 notices, right?

8           A     Correct.

9           Q     And your testimony doesn't make any claim  
10   that there was any defect in the approval or the  
11   accounting for that process, right?

12          A     That's correct.

13          Q     Now, you propose a capital structure, and  
14   if you want to turn to your Schedule 4.1 it may help.

15                   You propose a capital structure for  
16   ComEd of 62.89 percent long-term debt and 37.11  
17   percent common equity; is that right?

18          A     Yes.

19          Q     Does that 62.89 percent long-term debt  
20   include TFIs?

21          A     Yes, it does.

22          Q     You agree that ComEd has no preferred

1 stock, right?

2 A Yes.

3 Q And as you testified, ComEd doesn't rely on  
4 short-term debt as a permanent source of financing so  
5 you included none in the capital structure?

6 A Correct.

7 Q Given that there's sort of no short-term  
8 debt to worry about and no preferred to worry about,  
9 the Company's capital structure is a function of its  
10 equity balance and its long-term debt outstanding,  
11 right?

12 A Yes.

13 Q Equity balance is an accounting entry? We  
14 can find it on the books of any company?

15 A Yes.

16 Q And what matters for calculation of the  
17 overall cost of capital is the weighted average of  
18 the cost of equity and debt, right?

19 A Yes.

20 Q So what matters for that calculation is the  
21 ratio between the equity balance and the long-term  
22 debt outstanding, not the absolute value of either

1     number, right?

2             A     Yes.

3             Q     Is that ratio sometimes called the leverage  
4     ratio?

5             A     Yes, financial leverage.

6             Q     Now, you testify at Lines 78 through 80 of  
7     your direct testimony that ComEd's proposed capital  
8     structure reflects reversals of adjustments made to  
9     common equity as a result of the Company's use of  
10    purchase accounting to record its acquisition by PECO  
11    Energy Company.

12                         Do you see that testimony?

13             A     Yes.

14             Q     That acquisition refers to the October 2000  
15    transaction that we discussed two or three minutes  
16    ago, right?

17             A     Yes.

18             Q     And the common equity there refers to the  
19    common equity balance on the books of the Company,  
20    right?

21             A     Yes.

22             Q     I want to first just focus on the merger

1 before I talk about transfers of any assets.

2 So let's pretend it's October 21st of  
3 2000. Okay.

4 Were you present during Ms. Houstma's  
5 testimony?

6 A I caught some of it. We were on phone  
7 catch. It wasn't completely clear. A lot of things  
8 we couldn't hear.

9 Q Have you taken a look at the exhibit that  
10 was derived from the writings that Ms. Houstma made  
11 on an easel during her testimony?

12 A No, I have not.

13 Q I'm going to try to simulate it. I  
14 reproduced it, and actually blown up something  
15 similar to it.

16 I'm going to show you a document I'm  
17 going to mark as Commonwealth Edison Cross-Exhibit  
18 15.

19 (Whereupon, ComEd Deposition  
20 Exhibit No. 15 was marked for  
21 identification.)

22

1 BY MR. RIPPIE:

2 Q When I started this this was confusing to  
3 me, so I hope it can make things simple.

4 This document starts out with a  
5 \$6 billion equity number. That is illustrative.  
6 Just accept it for the purposes of the calculation  
7 process with the understanding that I'm not trying to  
8 imply that that's the actual number. I'm just using  
9 it for illustration purposes?

10 A Okay.

11 Q Does this chart, essentially, show how,  
12 under fair value accounting for a merger, the  
13 previous equity balance of the Company and the equity  
14 balance of the Company after the merger would be  
15 adjusted?

16 MR. FOSCO: Are you asking her to assume that  
17 these are the only entries that there are?

18 MR. RIPPIE: Assuming these are the only  
19 required entries.

20 THE WITNESS: I'll accept that.

21

22

1 BY MR. RIPPIE:

2 Q This line labeled "Goodwill" which here has  
3 a number of 4.926 billion, that value is actually  
4 derived from the other values on this chart; is that  
5 right?

6 A That's my understanding.

7 Q It is the remainder that's left over when  
8 you compare the adjustments made to the equity of the  
9 Company before the transaction and the -- I'm saying  
10 that question way more complicated than it is.

11 It's the number that's required to  
12 make this \$6 billion initial equity, plus the sum of  
13 the adjustments, equal to the purchase price, right?

14 A Yes.

15 Q Now, in this case, this illustrative case,  
16 the difference between equity before and equity after  
17 is as the document shows 2.92 billion, right?

18 A Yes.

19 Q If the adjustment, which is label the  
20 reduction in assets and change in liabilities were  
21 some other number than what shows on here, that would  
22 have changed the Goodwill number, right?



1           A     Yes.

2           Q     It would not have changed the 2.92 billion  
3 difference, would it?

4           A     No.

5           Q     And that's because that 2.92 billion  
6 difference flows from the difference between the  
7 purchase price and the equity balance regardless of  
8 the amount of the fair value adjustment, right?

9           A     Yes.

10          Q     So if on October 21st of 2000, we wanted to  
11 eliminate 100 percent of the effect on the equity  
12 balance of the merger, and I'm now going to ask you  
13 to use your knowledge of the actual data, the correct  
14 adjustment on October 21st of 2000 would have been to  
15 back-out 2.92 -- \$2.292 billion of equity, right?

16          MR. FOSCO: Can I have the question read back.

17          MR. RIPPIE: I'll read it back myself.

18                   BY MR. RIPPIE:

19          Q     If we were going to adjust the equity  
20 balance for the effect of the merger, the correct  
21 adjustment to be to back-out the \$2.92 billion,  
22 right?

1           A     On October 21st?

2           Q     Yes.

3           A     Yes.

4           Q     And that would completely adjust for the  
5 effect on equity of the merger, right?

6           A     Yes.

7           Q     Now, you also testify, do you not -- strike  
8 that.

9                     I will make the question simpler.

10                    Would you also agree with me that had  
11 ComEd continued to own the nuclear units, that would  
12 be the end of the story, right?

13           MR. FOSCO:   On October 21st?

14           MR. RIPPIE:   Today.

15           THE WITNESS:   If ComEd still owned the nuclear  
16 plants, the reversal of the 4.791 and the 2.517 would  
17 not be necessary.

18   BY MR. RIPPIE:

19           Q     So the answer to my question is "yes," the  
20 2.292 would be the end of the story in your view?

21           A     Yes.

22           Q     Now, in your view, because ComEd does not

1 continue to own the nuclear plants, you recommend  
2 that the Commission decrease ComEd's equity balance  
3 by 100 percent of the unwrittendown amount of the  
4 nuclear plants, right?

5 MR. FOSCO: Are you saying the net amount?

6 MR. RIPPIE: No.

7 MR. FOSCO: You are saying just the 4.7 million  
8 no other adjustment?

9 MR. RIPPIE: No, no. I'm just trying to ask  
10 about the adjustment. I'm just trying to net it out  
11 from everything she's doing. I'm just trying to  
12 focus on the value of the nuclear plants.

13 THE WITNESS: My recommendation was based off  
14 of what Mr. Mitchell presented. I didn't agree with  
15 his adjustment to add back in plant writedown and  
16 adjust for the deferred tax and investment tax  
17 credits of 2.157 billion.

18 BY MR. RIPPIE:

19 Q Let's maybe try to get this by looking at  
20 your Schedule 4.1.

21 Your Schedule 4.1 reduces equity by  
22 4.926 billion, not by 2.292 billion, right?

1           A     Yes.  It's the 2.292 billion.  And the  
2     2.561 billion I refer to on Page 6 of my direct  
3     testimony on Line 108.

4           Q     And that reflects the added amount --  
5     sorry.

6                     That reflects the larger amount by  
7     which the nuclear -- the larger value of the nuclear  
8     plants prior to the writedown net of the offsetting  
9     tax adjustments?

10          A     Yes.

11          Q     Right?

12          A     Yes.

13          Q     Now, as a result of your adjustments, the  
14     capital structure you propose is different than the  
15     ratio of equity to debt reflected on the audited  
16     books of ComEd, right?

17          A     Yes.

18          Q     And if we were to go back in time to  
19     December of 2000, there are a variety of ways in  
20     which ComEd could have transferred the nuclear  
21     assets, right?

22          A     I guess.

1           Q     Well, my -- certainly not all of the ways  
2     in which the traction could have been structured  
3     would have resulted in all of the net impact of that  
4     transaction hitting equity, right?

5           A     Could you give me an example.

6           Q     Sure.

7                     Ex-Gen could have issued debt and  
8     given ComEd the proceeds in exchange for a portion of  
9     the plants?

10          A     Yes.

11          Q     Ex-Gen could have given ComEd a note?

12          A     Right.

13          Q     Ex-Gen could have given ComEd an assignment  
14     of future receivables?

15          A     Okay.

16          Q     ComEd could have asked the bond trustee to  
17     allow Ex-Gen to assume mortgage debt?

18          A     Yes.

19          Q     All of those things would have resulted in  
20     less of that 100 percent of that adjustment hitting  
21     the equity balance, right?

22          A     Yes.

1           Q     And, in fact, at the time the plants were  
2     constructed, they weren't constructed with  
3     100 percent equity, were they?

4           A     They were capital expenses, so you can't  
5     designate what capital goes with what asset.

6           Q     I had that theoretical discussion with  
7     Mr. McNally a few months ago, but let me put it in  
8     practical terms.

9                     When the nuclear -- it's not your  
10    testimony when the nuclear plants were built that  
11    100 percent of the cash cost of that was financed by  
12    nothing but a series of new equity sales by ComEd,  
13    right?

14          A     That's correct.

15          Q     They went to the debt markets too?

16          A     That's my understanding.

17          Q     Now, if your adjustment is recognized fully  
18    to equity, what is the effective, call it adjusted or  
19    hypothetical equity balance of the Company?

20          A     You mean the balance that I state on  
21    Schedule 4.1.

22          Q     Correct.

1           A     The balance of equity would be 2 billion  
2     561 million.

3           Q     When was the last time you're aware of that  
4     ComEd allowed its equity balance to fall below  
5     \$3 billion?

6           A     I didn't look into that.

7           Q     So you have no basis to contradict any  
8     testimony by ComEd financial witness on that subject?

9           A     No.

10          Q     Now, please tell me if you don't know the  
11     answer to this because I did ask you, and I know you  
12     are not an accountant.

13                     Do you know whether GAP required ComEd  
14     to transfer the plants as of 1/1/01 at the date  
15     that -- at the value that appeared on its books?

16          A     No, I do not know that.

17          Q     One way or the other?

18          A     No.

19          Q     Before I sort of move to the next subject,  
20     I just want to make sure that one thing is absolutely  
21     clear.

22                     The adjustment that we're talking

1       about -- try it a different way.

2                       We're in agreement that no part of the  
3       Goodwill entry is included in rate base, right?

4               MR. FOSCO:   Can you clarify the question.

5                       What Goodwill adjustment are you  
6       referring to?

7       BY MR. RIPPIE:

8               Q       There is a Goodwill balance on ComEd's  
9       books, right?

10              A       I assume so.

11              Q       That's not in rate base, is it?   We are  
12       talking about just a capital structure issue, right?

13              A       You have to ask Diane Hathhorn or Tracy  
14       Ebrey.

15              Q       We can skip a bunch of things here.

16                      Now, both of the transactions that  
17       we've discussed, the merger and the transfer occurred  
18       prior to the end of January of 2001, right?

19              A       I believe so.

20              Q       Are you familiar with the capital structure  
21       that was considered by the Commission in Docket  
22       01-0423 ComEd's last delivery services rate case?



1           A     I looked at that time a long time ago.  I  
2     don't remember what it was.

3           Q     Would you accept, subject to check, that  
4     the capital structure measurement date was 12/31/01  
5     which would have been after both the merger and the  
6     transfer transactions?

7           A     Yes.

8           Q     Do you know whether or not it is true that  
9     in 01-0423 Staff based its capital structure  
10    recommendation on an unadjusted equity balance  
11    directly off of ComEd's books of account?

12          A     I'm not familiar with that.

13          Q     I would like you to assume for the next few  
14    questions that Ms. Janice Freetly, F-r-e-e-t-l-y,  
15    Ms. Janice Freetly's Schedule showed a common equity  
16    balance of 4.952 billion as of March 31, 2001,  
17    correct?

18          A     You want me to assume that Janice --

19          Q     I want you to assume that because I think  
20    if we had to, we could get a Commission order out and  
21    look it up.  But I'm not going to ask you to --

22          A     That's fine.  If I remember right that

1 Commission order was a settled on the capital  
2 structure.

3 Q Well, we can have a discussion about that,  
4 but I might disagree.

5 I'm just going to ask you to assume  
6 that's Janice Freetly's testimony. Okay?

7 A Okay.

8 Q Would you like to see it? I can show it to  
9 you.

10 A I don't think we all want to wait for me to  
11 read testimony.

12 Q It's only a page.

13 A Then, let me see it.

14 MR. RIPPIE: I don't know whether I'm going to  
15 mark this or not.

16 JUDGE DOLAN: Okay.

17 BY MR. RIPPIE:

18 Q I think without going back to my desk, it's  
19 about Line 162. It's actually 147 to 169.

20 I'm wrong. It's 142 to 146.

21 A Okay. I don't see any numbers.

22 Q Well, she, at Lines 142 through 146,

1 indicates that she got her equity balance by  
2 subtracting the preferred stock from the common  
3 equity balance on the Company's Form 10-Q, right?

4 A That's what the form says.

5 Q If you look at her Schedule 5.1?

6 A That's not attached.

7 Q Well -- okay.

8 We'll do it the old way.

9 I want you to accept, subject to  
10 check, the Schedule 5.1 shows an equity balance of  
11 4.952 billion as of 3/31/01. Okay?

12 A Okay.

13 Q Assuming that that's accurate, that's about  
14 2.4 billion more than the common equity balance Staff  
15 says ComEd has now, right, for ratemaking purposes?

16 A Yes.

17 Q And you don't dispute, do you, that ComEd  
18 has had earnings since 3/31/2001?

19 A No, I don't dispute that.

20 Q And a capital contribution has been made  
21 since then?

22 A Yes.

1           Q     And no further transfers of significant  
2     assets have been made since then, right?

3           A     Yes.

4           Q     Now, will you accept, subject to check,  
5     that the Commission found that ComEd's common equity  
6     was 5.224 billion as of 12/31/01 in its first order  
7     in that docket or -- I'm happy to show you the order,  
8     if you want to see it.

9           A     I'll accept that subject to check.

10          Q     Can you identify any transaction or event  
11     that has occurred since 12/31/01 to the present that  
12     would have caused ComEd's actual equity balance to be  
13     reduced by anywhere between 2 and a half to  
14     \$3 billion?

15          A     I don't know the answer to that.

16          Q     You are not aware of it?

17          A     No, I didn't look into it.

18          Q     Okay. Let's talk briefly, I hope, about  
19     capital structure.

20                     Now, is it your position that the  
21     capital structure of a utility should tie to its rate  
22     base? You want me to try the question a different

1 way?

2 A I think that the capital structure should  
3 reflect the original cost of depreciation of assets,  
4 depreciate the assets.

5 Q When you say "reflect" do you mean equal?

6 A No. There are items in capital structure  
7 that aren't necessarily in rate base as far as assets  
8 are -- transmission for example.

9 Q There is a lot of reasons that capital  
10 structure in rate base, total capital structure in  
11 rate base might diverge, aren't there?

12 A Yes.

13 Q So, for example, capital structure will be  
14 effected by the amortization rate of debt which may  
15 be entirely different than the depreciation rate of  
16 the assets that are purchased?

17 A Yes.

18 Q And capital structure may be effected by  
19 contributions to capital that don't necessarily  
20 purchase assets in rate base, right?

21 A Yes.

22 Q And capital structure may be effected by

1 dividends which utilities typically make?

2 A Yes.

3 Q So would you agree with me that there is  
4 nothing, per se, wrong about the fact that a utility  
5 capital structure doesn't match its rate base?

6 A Correct.

7 Q Now, you are aware that both Mr. McNally  
8 for Staff and ComEd Witness Hadaway have identified  
9 sample companies which Staff and ComEd witnesses  
10 testify constitute appropriate sample proxies for  
11 ComEd, right?

12 A Yes.

13 Q And I'm going to briefly show you a copy of  
14 what I believe is ComEd Cross-Exhibit 14.

15 Now, I'm not going to ask you to  
16 repeat what was discussed with Mr. McNally.

17 But I will ask you that there is no  
18 company included in Mr. McNally's sample that has  
19 much leverage as the 37.11 debt -- sorry -- 37.11  
20 percent equity ratio that you recommend; is that  
21 correct?

22 A According to this chart, that's correct.

1           Q     Now, on Pages 7 through 10 of your, I  
2     believe, rebuttal, you testify that you looked at  
3     funds from operation debt and interest coverage  
4     ratios to try to assess what ComEd's ratings would be  
5     if your recommendations were adopted, correct?

6           A     You mean my direct?

7           Q     Let me check that.   Yes, I do.

8                     I apologize.   That would be Pages 7  
9     through 10 of your direct?

10          A     Yes.

11          Q     Now, I notice on Table 1 on Page 9 of your  
12     direct, you don't list the debt ratio?

13          A     Correct.

14          Q     Can you tell me where the debt ratio you  
15     recommend would place ComEd?

16          A     The debt ratio I recommend includes TFIs.

17          Q     I'm not asking you --

18          A     So it's not an equal comparison to the S&P  
19     ratios that are presented.

20          Q     Let's take them both.

21                     Where would the unadjusted debt ratio  
22     place ComEd?

1           A     At the very top of the Double B range; very  
2     bottom of the Triple B range. 62 is the cut off.

3           Q     Double B is sub-investment group?

4           A     Yes.

5           Q     Colloquially referred to as --

6           A     If you take out the TFIs.

7           Q     I'm not there yet.

8                     Below investment grade colloquially  
9     referred to as junk?

10          A     Yes.

11          Q     Okay. If you take out the TFIs, where do  
12     we go?

13          A     Around 45 percent.

14          Q     Which is Triple B?

15          A     45 percent equity.

16                     Excuse me. Yes, it's Triple B.

17          Q     In both cases?

18          A     In the top part of the Triple B range; top  
19     third.

20          Q     Top third.

21                     In both cases, lower than ComEd's --  
22     lower than the ratio if ComEd's actual capital



1 structure on its books were used, right?

2 A Yes. It's lower than the capital structure  
3 on their books.

4 Q Now, at the end of your rebuttal testimony,  
5 you address your view of the implications concerning  
6 a TFI adjustment to the capital structure, right?

7 A Yes.

8 Q ComEd didn't rely -- just to be clear,  
9 ComEd didn't rely on a TFI adjustment to arrive at  
10 its recommended 54.40 percent equity, did it?

11 A No.

12 Q If it had tried to do such a thing, it  
13 would have come up with even a higher equity  
14 percentage, right?

15 A Yes.

16 Q If a TFI adjustment were made at least as  
17 in the way that you describe how S&P would do it,  
18 would you agree that in calculating the resulting  
19 financial ratios, you would have to remove both the  
20 TFIs and the associated cash flows?

21 A Yes.

22 Q And what that means in sort of lay language

1 is, you'd have to not consider the money used to pay  
2 the periodically amortized portion of the securitized  
3 debt, right?

4 A That and the interest charges.

5 Q Which was my next question.

6 So you back them both out?

7 A Correct.

8 MR. RIPPIE: Thanks very much.

9 That's all I have.

10 MR. FOSCO: Can we have just a few minutes.

11 (Whereupon, there was a  
12 change of reporter.)

13 JUDGE DOLAN: Back on the record.

14 MR. FOSCO: Your Honor, staff has no redirect.

15 JUDGE DOLAN: Thank you.

16 MR. RIPPIE: ComEd would move for the admission  
17 of Cross Exhibit 15.

18 JUDGE DOLAN: Any objection?

19 MR. FOSCO: No objection.

20 JUDGE DOLAN: ComEd Cross Exhibit 15 will be  
21 admitted into the record.

22

1                   (Whereupon, ComEd Cross  
2                   Exhibit No. 15 was  
3                   admitted into evidence as  
4                   of this date.)  
5       JUDGE DOLAN:  So we're doing Schlaf.  
6       MR. FOSCO:  I thought Ebrey was next.  
7       MR. RIPPPIE:  He's got five minutes.  
8                   (Discussion off the record.)  
9                   (Whereupon, a short break was  
10                  taken.)  
11       JUDGE DOLAN:  Let's go ahead and go back on the  
12       record.  
13       MS. SCARSELLA:  Staff calls Theresa Ebrey.  
14       JUDGE DOLAN:  Good afternoon.  Raise your right  
15       hand.  
16                   (Witness sworn.)  
17  
18  
19  
20  
21  
22

1           MS. SCARSELLA: Your Honors, Ms. Ebrey is  
2     offering two exhibits, ICC Staff Exhibit 2.0 which  
3     includes attachments A through K and schedules 2.1  
4     through 2.10. There is a public version and a  
5     confidential version both filed on December 23rd of  
6     2005; and ICC Staff Exhibit 13.0 which includes  
7     attachments A through D and schedules 13.1 and 13.8.  
8     There is a public and a confidential version both  
9     filed on February 27th of 2006.

10          JUDGE DOLAN: Did you say 13.1 and or 13.1  
11     through.

12          MS. SCARSELLA: Through.

13          JUDGE DOLAN: Okay.

14          MS. SCARSELLA: And staff would like to move  
15     those into the record.

16          JUDGE DOLAN: Any objection?

17          MR. RIPPIE: None.

18          JUDGE DOLAN: All right. Then Staff Exhibit  
19     2.0 with schedules A through K and exhibits 2.1  
20     through 2.10 both a public and a confidential version  
21     will be admitted into the record. And then Staff  
22     Exhibit 13.0 with schedules A through D with exhibits

1 13.1 through 13.8, both public and confidential  
2 versions will be admitted into the record.

3 (Whereupon, ICC Staff  
4 Exhibit Nos. 2.0 and 13.0 were  
5 admitted into evidence as  
6 of this date.)

7 JUDGE DOLAN: Proceed, Counsel.

8 MR. GARG: Thank you, your Honor.

9 (Witness previously sworn.)

10 THERESA EBREY,  
11 called as a witness herein, having been previously  
12 sworn, was examined and testified as follows:

13 CROSS-EXAMINATION

14 BY

15 MR. GARG:

16 Q Good afternoon, Ms. Ebrey. My name is  
17 Rishi Garg, and I work for the Attorney General's  
18 Office.

19 Can you please refer to Page 30 of  
20 your direct testimony.

21 A I'm there.

22 Q Beginning at line 627, you address an

1 adjustment for 2005 salary and wage increases,  
2 correct?

3 A That's correct.

4 Q Wage and salary increases took place after  
5 the 2004 test year, correct?

6 A Correct.

7 Q Labor costs are the product of wage rates  
8 and the number of employees, correct?

9 A Correct.

10 Q Would you agree that pro forma test year  
11 labor expense should not include wages and salaries  
12 for nonexistent employees?

13 MS. SCARSELLA: Objection. Ms. Ebrey did not  
14 testify about labor expense. She made a correction  
15 to salary and wage increases according to a response  
16 to a data request.

17 MR. GARG: Salary and wage increases  
18 incorporate or encompass employees.

19 JUDGE DOLAN: To the best you can answer the  
20 question, please.

21 THE WITNESS: Could you repeat that question.

22 MR. GARG: Q Sure.

1                   Would you agree that pro forma test  
2   year labor expense should not include wages and  
3   salaries for nonexistent employees?

4           A     I would agree with that.

5           Q     So, for example, if ComEd has a position  
6   that is vacant, it is not actually incurring labor  
7   costs for that position, is it?

8           A     I can't think of labor costs that would be  
9   incurred for a vacant position, no.

10          Q     Absent any evidence that the vacant  
11   position is being filled or will be filled, would it  
12   be appropriate to include the hypothetical salary for  
13   that vacant position in the cost of service?

14          A     No.

15          Q     Thank you.

16                   Are you familiar -- changing grounds  
17   now. Are you familiar with staff's adjustments to  
18   benefits expenses such as severance costs?

19          A     I'm not familiar with an adjustment that  
20   staff made in this case for severance cost.

21          Q     How about the company's?

22          MS. SCARSELLA: I'm going to object. It's

1 outside the scope of her testimony. She didn't  
2 testify as to severance costs.

3 MR. GARG: I'll withdraw the question.

4 JUDGE DOLAN: Okay.

5 MR. GARG: Q I'd like to show you a data  
6 request that I believe you prepared. It's the  
7 company's response to staff data request TEE 15.07.

8 Are you familiar with this request?

9 A Yes, I am.

10 Q In fact, didn't you prepare this request to  
11 the company?

12 A Yes, I did.

13 Q Is it safe to say in preparing this request  
14 that you contemplated severance costs?

15 MS. SCARSELLA: Objection, your Honor. If it's  
16 related to her testimony, it's one thing; but, I  
17 mean, Ms. Ebrey did her investigation and submitted  
18 testimony in this docket, and severance cost was not  
19 included. She did not prepare the response. She may  
20 have written the request, but she did not prepare the  
21 response, so she can't verify the response to this  
22 data request either.



1           MR. GARG: Your Honor, this request was  
2 prepared, and it led to the preparation of her  
3 testimony.

4           MS. SCARSELLA: She did not testify as to  
5 severance costs.

6           JUDGE DOLAN: I'll sustain the objection; if  
7 she doesn't know.

8           MR. GARG: Q So you just testified that you  
9 did not make any adjustment to severance costs,  
10 correct?

11          A Correct.

12          Q But you are aware that the company did have  
13 severance costs in their cost of service?

14          A The DR that you showed me refers to a  
15 section in Mr. Hill's testimony that discusses  
16 employee arbitration settlement.

17          Q Which testimony exhibit are you referring  
18 to?

19          A Mr. Hill's -- the exhibit that's referenced  
20 in this data request TEE 1507.

21          Q Okay. One second.

22                       So you have read Mr. Hill's rebuttal

1 testimony?

2 A Yes.

3 Q Okay. Are you aware then that the company  
4 accrued approximately \$21 million in severance costs  
5 related to the Exelon Way program in 2004?

6 MS. SCARSELLA: Your Honor, I'm going to have  
7 to object one more time. We still seem to be talking  
8 about severance costs, and Ms. Ebrey did not testify  
9 about severance costs.

10 MR. GARG: Based upon her answer that she read  
11 Mr. Hill's testimony, I was simply asking her if in  
12 what she read she found what Mr. Hill testified to.

13 JUDGE DOLAN: Overruled. She may answer. If  
14 she doesn't know, she doesn't know.

15 THE WITNESS: I know that there's a section in  
16 Mr. Hill's testimony that discusses severance. I'm  
17 not sure of an amount of severance costs that were  
18 included.

19 MR. GARG: Q Okay. And to your knowledge,  
20 staff did not propose to remove severance costs from  
21 pro forma test year operating expenses, did they?

22 A I don't believe so.

1           Q     Are you familiar with the Commission's  
2     final order in Docket No. 01-0432?

3           A     Is that ComEd's last DST case?

4           Q     I believe so.

5           MS. SCARSELLA:   0423.

6           MR. GARG:   Q   I'm sorry.   It's not.   It's  
7     Illinois Power proposed revisions to delivery service  
8     tariff sheets and other sheets.

9           A     I may have seen that order at some time in  
10    the past.   Recently I have not referred to it that I  
11    recall.

12          Q     Okay.   So you recall -- you may have  
13    recalled the case.

14                         Do you recall that the Commission  
15    disallowed the recovery of severance costs if such  
16    costs, quote, will not be incurred on an ongoing  
17    basis, end quote, and the costs are a product of a  
18    merger?

19          A     No.

20          MR. GARG:   Thank you, and I have no more  
21    questions.   Thank you.

22          JUDGE DOLAN:   Are you doing anything with this

1 as an exhibit, or should we not worry about that?

2 MR. GARG: I believe I am going to mark it as  
3 Cross Exhibit 4 I believe it's what we're on, and I  
4 will ask to move it into the record.

5 (Whereupon, AG Cross Exhibit No.  
6 4 was marked for  
7 identification.)

8 MS. SCARSELLA: I'm going to object. Staff did  
9 not -- cannot verify and did not write the response  
10 to this data request, so I don't believe he has  
11 foundation -- established a foundation to do so.

12 MR. GARG: I've established a foundation that  
13 the witness prepared --

14 MS. SCARSELLA: She wrote the question but not  
15 the answer.

16 MR. GARG: Well --

17 MS. SCARSELLA: It's outside the scope of her  
18 testimony as well.

19 MR. GARG: Witnesses prepare discovery requests  
20 to prepare their testimony.

21 MS. SCARSELLA: She did not address this in her  
22 testimony and she cannot verify the response.

1 JUDGE DOLAN: All right. Since we can't verify  
2 the response, I'll reject it as an exhibit then.

3 MR. GARG: Thank you.

4 CROSS-EXAMINATION

5 BY

6 MR. RIPPPIE:

7 Q Good afternoon, Ms. Ebrey. I'm Glenn  
8 Rippie. We've met before.

9 To take sort of the surprise away from  
10 it, the first thing I'm going to talk to you about is  
11 incentive compensation. It is my belief that none of  
12 the questions I ask you are going to require you to  
13 divulge confidential details of the plan documents or  
14 other materials that have been designated as  
15 confidential.

16 If at any time you feel that my  
17 questions require you to do that in order to give a  
18 fair and complete answer, will you please tell us  
19 before you give the answer so that we can take the  
20 necessary steps to protect that information?

21 A Ill.

22 Q Thanks very much.

1                   I want to first turn to your direct  
2   testimony at roughly lines 483 through 524 where you  
3   discuss a variety of or at least cite a variety of  
4   Commission prior orders.

5                   Can I take from that section of  
6   testimony that you are citing those orders as part of  
7   a policy recommendation to the Commission, not as a  
8   legal argument that the Commission must follow a  
9   certain decision?

10           A     Yes.

11           Q     And you acknowledge, do you not, that the  
12   Commission has allowed incentive compensation in some  
13   cases including, for example, ComEd's last DST case  
14   and a couple of other cases that you cite?

15           A     Yes.

16           Q     Now, is it your policy recommendation in  
17   this case that the Commission allow recovery of  
18   incentive compensation costs if it confers upon  
19   ratepayers specific dollar savings or other tangible  
20   benefits?

21           A     Yes.

22           Q     And if there was no precedent at all, would

1       that be the same policy standard you'd recommend?

2               A     Yes.

3               Q     Now, will you agree with me that electric  
4       utilities in Illinois including ComEd are charged  
5       with providing adequate, efficient, and reliable  
6       service to their customers?

7               A     Yes.

8               Q     And when the General Assembly wrote those  
9       words, they wrote them, would you agree, because they  
10      expected customers to benefit from utilities  
11      providing adequate, efficient, and reliable service?

12                       Do you know what, I'll withdraw that  
13      question.  You don't know what the General Assembly  
14      thought.  I'll make it simpler.

15                      You agree that customers benefit when  
16      utilities, in fact, provide adequate, efficient, and  
17      reliable service, wouldn't you?

18               A     I would agree that that is what customers  
19      expect from their utilities.

20               Q     Fair enough.

21                      When those expectations are met, they  
22      benefit, right?

1           A     I guess it depends on what you mean  
2     benefit. Do they get something over and above what  
3     they expect to get?

4           Q     No. Just that they're better off than if  
5     they got less adequate, less efficient, or less  
6     reliable service.

7           A     Okay. I could agree with that.

8           Q     And would you also agree that customers  
9     benefit from their utility's providing service with  
10    greater efficiency?

11          A     Yes.

12          Q     And you can think of efficiency in two  
13    ways, can you not? You can think of efficiency  
14    operationally, that is, how much effort it takes to  
15    accomplish a given task, operationally; and you can  
16    also think of economically, how much it costs a  
17    utility to perform a given task, right?

18          A     Yes.

19          Q     And if a utility provides service with  
20    greater economic efficiency, customers will benefit  
21    over time through lower rates; is that correct?

22          A     Not necessarily.



1           Q     Okay.  Let me amend my question then.

2                     Say if utilities provide service with  
3     greater efficiency, all other things being equal,  
4     customers will over time benefit through lower rates  
5     assuming that at least one rate case is filed?

6           A     If that rate case would result in lower  
7     rates and those lower rates were a result of those  
8     efficiencies which would lower the cost, then the  
9     ratepayers would benefit through lower rates.  I have  
10    not seen that happen in cases in Illinois that I've  
11    been involved with.

12          Q     Well, let's break that answer down just a  
13    bit.  Let's assume that the rate case asked for an  
14    increase in rates but it asks for a smaller increase  
15    than it would have sought had the company not made  
16    the efficiency improvements.

17                     Customers benefit from that smaller  
18    rate increase, right?

19          A     If the evidence that was included in that  
20    rate case to show that that was the case, then I  
21    would agree with that statement.

22          Q     I'm not asking you about fanciful

1        efficiencies. My question only talks about a real  
2        economic efficiency that actually reduces costs.

3                        In that case, customers are better off  
4        regardless of whether the total revenue requirement  
5        goes up or down, right?

6                A        I don't know that I could agree with that  
7        because the revenue requirement is a function of the  
8        total cost, not just an individual cost going up or  
9        down.

10              Q        All other things being equal, the only  
11        change is whether or not a program has resulted in an  
12        economic efficiency improvement that has reduced O  
13        and M costs, okay. In case A there's been no such  
14        program, no O and M reduction. In case B there has  
15        been such a program and there is an O and M  
16        reduction.

17                        Customers are better off in case B  
18        than in case A, aren't they?

19              A        Provided the rates would be lower under  
20        case B than they were under case A, I would agree.

21              Q        If the utility's costs are lower, the rates  
22        will be lower, right?

1           A     There's other things than just the  
2     utility's cost that impact rates and so I --

3           Q     All other things being equal, we're just  
4     talking about that one change.

5           A     Okay.

6           Q     The answer is yes?

7           A     Yes.

8           Q     We saved a page.

9                     Now, you agreed with me earlier that  
10    customers benefit from increased service reliability.  
11    I want to ask you just a few questions about the  
12    details of that.

13                    You would agree that customers benefit  
14    from reductions in the frequency of outages, right?

15          A     Right.

16          Q     Also from reductions in the duration of  
17    outages?

18          A     Right.

19          Q     And since customers, as you said, are a  
20    judge of what they expect, would you also agree that  
21    customers are better off by service which they are  
22    more satisfied with than if they're less satisfied?

1           A     Yes.

2           Q     And as a result, would you agree that  
3 customers benefit from having ComEd managers and  
4 employees focused on providing reliable service?

5           A     I believe that should be the focus of the  
6 utility's employees and managers.

7           Q     Regardless?

8           A     Regardless.

9           Q     But it does benefit customers nonetheless,  
10 right, for them to do that?

11          A     I don't know that it benefits customers  
12 that they're doing the job they should do.

13          Q     Okay. If they do it better, customers are  
14 better off?

15                     Not a trick question. I'll try it  
16 this way.

17                     If they exceed the minimum level of  
18 performance, customers are better off, right?

19          A     I don't know that the minimum level of  
20 performance should be the measurement.

21          Q     I'm not asking you that.

22                     I'm just saying customers are better

1 off if ComEd managers and employees exceed the  
2 minimum level of performance than they are if they  
3 meet the minimum level of performance?

4 A To the extent that it results in them  
5 getting better service, I could agree with that.

6 Q Now, at lines 294 through 302 of your  
7 direct, you identify five reasons that support in  
8 your view a disallowance of incentive comp thoughts.

9 I just want to verify that none of  
10 those five is a claim that paying incentive  
11 compensation is improved?

12 A No, none of those five say that.

13 Q And none of those five is a claim that  
14 paying incentive compensation doesn't work, i.e.,  
15 doesn't affect employee behavior?

16 A No, none of those five say that.

17 Q And you have no experience as a utility  
18 operator or engineer, right?

19 A Right.

20 Q So you would have no basis on which to call  
21 into question Mr. Costello's testimony regarding how  
22 the incentive compensation program, in fact, affects

1 Commonwealth Edison's operations, would you?

2 A Could you repeat that.

3 Q Sure.

4 Actually just this once would you mind  
5 reading it back?

6 (Record read as requested.)

7 THE WITNESS: Could you cite to any of his  
8 testimony?

9 MR. RIPPIE: Q Sure. I mean, I can give you  
10 page and line numbers, but that's a whole lot more  
11 detail than what I'm really trying to get. I'm just  
12 trying to get a simple answer.

13 Mr. Costello, would you accept subject  
14 to check, testified that incentive compensation is a  
15 desirable way to motivate employees?

16 Now I'm not asking you to say whether  
17 that's true or not. I'm just asking you you have no  
18 way to know whether it's true or not, right?

19 A Which question should I answer.

20 Q You have no way to know whether or not what  
21 Mr. Costello -- you have no basis to challenge his  
22 testimony?

1           A     I have not talked to any ComEd employees,  
2     so I don't know what the incentive comp plan, how it  
3     influences their behavior, no.

4           Q     Saved another page.

5                     Would you agree with me that if ComEd  
6     does not attract an appropriate number of quality  
7     managers and employees over time it will be less able  
8     to provide safe, efficient, and reliable service?

9           A     I don't have an opinion on that.

10          Q     Your testimony does not dispute that the  
11     aggregate level of total cash compensation, that is,  
12     noncontingent comp plus incentive comp, is  
13     unreasonable or excessive, does it?

14          A     No.

15          Q     And you have made no recommendation in  
16     either your direct or your rebuttal testimony that  
17     ComEd reduce its total cash compensation?

18          A     No. My adjustment for incentive comp is  
19     just whether the incentive comp that is paid by the  
20     company should be recovered from ratepayers through  
21     the rates that are set in this proceeding.

22          Q     Or, as I believe you put it, whether or not

1     that cost is paid by the shareholder or the customer,  
2     right?

3             A     Right.

4             Q     Now, you testify -- I'm sorry, I didn't get  
5     a line number on this one but it's several places in  
6     your incentive compensation discussion -- that one of  
7     the factors that influenced your opinion was the fact  
8     that ComEd's executives could reduce or eliminate its  
9     incentive compensation program, right?

10                   Actually, I can give you a cite.  It's  
11     one of the five you cite at 294 through 302 of your  
12     direct.  It's, I believe, your third factor.

13                   It's true that -- do you have it?

14             A     Yes, I do.  It, I believe, starts with line  
15     447 of my direct testimony, Exhibit 2.0, and the  
16     following lines are confidential, 448 through 454.

17             Q     I understand.  That's why I was careful.  
18     I'm trying to be careful, and I think we can avoid  
19     the confidential problem.  At least I hope we can.

20                   It is true, is it not, that ComEd  
21     executives could reduce or eliminate many of the  
22     operating expenses included in the test year if they



1       so chose?

2               A     I don't know if they could do that or not.

3               Q     I'll try a few examples, and if you don't  
4       know, tell me.

5                       ComEd could reduce or eliminate fringe  
6       benefits for nonunion employees, right?

7               A     I would assume they would be able to, yes.

8               Q     They could reduce base pay for executive or  
9       managerial employees not subject to a bargaining unit  
10      contract?

11              A     Yes.

12              Q     And subject to any limitations in the  
13      bargaining unit agreement, they could lay off union  
14      employees, right?

15              A     Yes.

16              Q     In your review of all the materials made  
17      available to you by the company, did you locate any  
18      document or piece of testimony that indicated that  
19      ComEd was planning on discontinuing the annual  
20      incentive compensation program?

21              A     No, I don't believe I saw where they were  
22      planning to discontinue the incentive comp program.

1           Q     Now, you obviously have no then personal  
2     knowledge of what ComEd's intentions in that respect  
3     might be right?

4           A     Right.

5           Q     So you would have no basis on which to call  
6     into question company testimony about its intention,  
7     right?

8           A     Right.

9           Q     Now, are you aware that Mr. Costello has  
10    testified -- and I apologize, I don't have a line  
11    number; I can try to find it, but maybe we can do it  
12    without it -- has testified that if incentive  
13    compensation were eliminated, ComEd would have to  
14    increase base wages to make up for that?

15          A     I recall one of ComEd witnesses testifying  
16    to that. I don't remember for sure which one it was.

17          Q     Good enough.

18                   Because you have no personal knowledge  
19    of ComEd's behavior, you have no basis for  
20    disagreeing with that testimony, do you?

21          A     I do know that in the last DST case the  
22    incentive comp was decreased from what the company

1     had requested. I don't believe there was a  
2     comparable decrease in the base pay as a result of  
3     that.

4           Q     Well, when you say it was decreased in the  
5     last DST case, you mean -- if we can do this without  
6     getting into any confidential -- you mean what was  
7     allowed in rates was decreased, not that ComEd  
8     decreased the program, right?

9           A     Correct. And I'm not recommending they  
10    decrease the program at this point either.

11          Q     If; for the next, I think, two or three  
12    questions, I want you to assume this if.

13                   If any decrease in the incentive  
14    compensation program was compensated for by an  
15    increase in noncontingent cash compensation, would  
16    you agree that even if ComEd were to curtail its  
17    incentive compensation program and the Commission  
18    were to fully allow that program into rates, ComEd  
19    would not be over recovering its costs as a result of  
20    that curtailment?

21                   If you want me to break it down, I  
22    can. I'm trying to save time.

1           MS. SCARSELLA: Can you state the assumption  
2 again.

3           MR. RIPPIE: Q I want you to assume that any  
4 curtailment in the incentive comp program was offset  
5 by an increase in ComEd's actual noncontingent  
6 compensation. So if they eliminated \$10 million of  
7 incentive comp, they increased nonincentive comp by  
8 \$10 million. My second assumption is the Commission  
9 allows the cost of incentive comp to rates.

10                       My question is: As long as the base  
11 comp increases to make up for any reduction in  
12 incentive comp, ComEd doesn't over-recover, right?

13           A To the extent that the incentive comp that  
14 was allowed in rates is not actually paid to the  
15 employees, then ComEd could stand to over-recover its  
16 cost.

17           Q But my assumption is that any incentive --  
18 the curtailment in incentive comp is made up by an  
19 increase in the base wages.

20                       If that assumption holds true -- I'm  
21 not now asking you to tell me whether it will or not;  
22 I'm just asking you to make that assumption -- then

1 ComEd in total doesn't over-recover, right?

2 A It's hard to answer that because the amount  
3 that is allowed in incentive comp that is allowed to  
4 be recovered in rates, if it -- is it --

5 Q I'll --

6 A It's like the chicken and the egg, and I'm  
7 not sure which one is coming first.

8 Q I'll pull the chickens and eggs apart and  
9 see if we can get the record clear.

10 Let's assume the -- these are round  
11 numbers. They're for a illustrative purposes only.

12 Say the commission allows \$20 million  
13 of incentive compensation into the revenue  
14 requirement in this case and your worse fear occurs  
15 next year and ComEd cancels entirely that \$20 million  
16 incentive compensation program.

17 Are you with me so far?

18 A Uh-huh, yes.

19 Q Now my assumption kicks in, and in order to  
20 attract good employees, ComEd increases its base  
21 salary by \$20 million.

22 Its total costs next year still match

1 the total costs in the revenue requirement, right?

2 A Right.

3 Q Now, you understand that ComEd's annual  
4 incentive compensation program has both a threshold  
5 and a target level built into it, right?

6 A Right.

7 Q And at threshold, incentive compensation  
8 begins to be funded and payouts begin, right?

9 A Right.

10 Q And above threshold, payouts can go up to a  
11 target level but only if performance warrants?

12 A I would agree with that.

13 Q And above the target, they can actually go  
14 to a third level which ComEd calls distinguished if  
15 performance is outstanding?

16 A Correct.

17 Q Now, you agree that total annual incentive  
18 compensation has been paid above target in each of  
19 the last six years, right?

20 A Are you saying the overall incentive comp,  
21 or are you breaking it down into the individual  
22 incentive comp plans that have been paid in the last

1 six years?

2 Q The overall level of annual incentive  
3 compensation has been above target in each of the  
4 last six years?

5 A Yes, it has.

6 Q But in this case, ComEd is only requesting  
7 that the Commission allow into the revenue  
8 requirement incentive comp costs up to target, right?

9 A Right.

10 Q If ComEd's employees perform at an  
11 outstanding above target level, shareholders bear  
12 that cost, right?

13 A If the level that ComEd has requested is  
14 approved in rates, that would be correct.

15 Q On to customer deposit balances.

16 As I understand it, you request at  
17 lines 571 through 583 of your direct and roughly 525  
18 through 532 of your rebuttal a \$31.477 million  
19 adjustment for customer deposit balances; is that  
20 right?

21 A That's correct.

22 Q And the basis of that recommended

1 adjustment is that your -- is your conclusion that  
2 customer deposit balances are a source of capital to  
3 ComEd in addition to its capital structure, right?

4 A Customer deposits are funds provided by the  
5 ratepayers that the company has use of.

6 Q Can you define cash working capital for us?

7 A It's the amount of cash that the company  
8 would need to pay its bills on a day-to-day basis.

9 Q And depending upon the way that cash  
10 working capital relates to the company's expenses,  
11 that may affect the company's total rate base, right?

12 A Yes.

13 Q Now, in this case the company has not  
14 requested an addition to rate base for cash working  
15 capital, right?

16 A Right.

17 Q And the funds that customers, in your  
18 words, supply through their deposit balances would  
19 provide cash working capital to the company in your  
20 view, wouldn't it?

21 A As I discuss in my rebuttal testimony, it's  
22 Exhibit 13, lines 527 to 532, I'm not seeing customer



1 deposits -- customer deposits have been treated  
2 separately from a cash working capital allowance in  
3 rate base.

4 Q I understand that's your testimony.

5 I thought I asked you a slightly  
6 different question, which is regardless of how they  
7 have been historically treated, that cash, to the  
8 company, looks like cash working capital if your  
9 theory is correct. It's money that the company can  
10 use just as you said in responding to my answer what  
11 the definition of cash working capital was to pay its  
12 operational costs, right?

13 A Yes.

14 Q And you have not conducted any analysis of  
15 what the aggregate cash working capital position for  
16 the company is, right?

17 A No.

18 Q And, in fact, as I understand it, you have  
19 only testified to two potential sources of such funds  
20 other than from the company, the customer deposit  
21 balances and the budget payment plan balances, right?

22 A Can you repeat that.

1           Q     Sure.

2                     You've only testified about two pieces  
3 of what would potentially affect that total amount,  
4 customer deposit balances and budget payment plan  
5 balances, which is the next area we're going to go to  
6 in a minute?

7           MS. SCARSELLA:  When you say total amount --

8           MR. RIPPPIE:  The total amount of cash working  
9 capital.

10          THE WITNESS:  While the customer deposits would  
11 be funds that would be available for the company's  
12 use, I testified that that is not usually treated as  
13 a component of cash working capital as I have seen it  
14 in prior rate cases.

15          MR. RIPPPIE:  Q   I'll ask the question the way  
16 you describe it -- it's clear.

17                     You also, I think, claim at Page 5,  
18 line 579 to 582 of your direct that customer deposit  
19 balances are a cost free source of capital.

20                     Now strictly speaking -- did you find  
21 it?

22          A     I found that line, yes.

1           Q     Strictly speaking, that's not quite true,  
2     is it; ComEd pays interest to customers who have  
3     deposit balances, right?

4           A     And I do address that issue in my rebuttal  
5     testimony.

6           Q     And your position is if your adjustment  
7     here gets made, an offsetting adjustment or an  
8     adjustment in the other direction should be made for  
9     that cost?

10          A     And I proposed an adjustment on my schedule  
11     13.5 for the interest associated with customer  
12     deposits.

13          Q     Now, let's talk briefly about budget  
14     payment plan balances. This is not by rate case  
15     standards a whole lot of money. It's a \$529,000  
16     adjustment that you propose at lines 584 through 600  
17     of your direct.

18                     Is the basis for that adjustment the  
19     same as the basis for the customer deposit balance;  
20     namely, that you believe that it's money that the  
21     customers contribute to the company that allow it to  
22     fund its operations in a way -- that's a very long

1 question. Forget it. I'll try it again.

2 Is the basis the same; that's money  
3 available to the company that it doesn't have to get  
4 from somewhere else?

5 A Yes.

6 Q Now, in both of those cases, you propose to  
7 deduct, that is, customer deposit balances and budget  
8 payment plan balances, you propose deductions from  
9 rate base, right?

10 A Right.

11 Q So the net effect is to credit, if you  
12 will, customers at the overall rate of return for  
13 ComEd?

14 A I suppose that's one way you could put it,  
15 yes.

16 Q If the rate base goes down, the change in  
17 the revenue requirement is going to be that rate base  
18 Delta times the overall rate of return, right?

19 A Correct.

20 Q In the same manner, would you agree that if  
21 and when shareholders provide money that offsets  
22 ComEd's need to obtain capital from some other

1 source, it should get an analogous credit, they  
2 should get an analogous credit?

3 A Who do you mean they?

4 Q Shareholders.

5 A The shareholders. Not necessarily.

6 Q Why not?

7 A Because -- just because the shareholders  
8 spend money does not result in something that should  
9 be recovered through rates.

10 Q Fair enough. I'll try to make the question  
11 a little more precise then.

12 Much like the customer deposit  
13 balances and the budget payment plan balances, if  
14 shareholders provide money that relieve the company  
15 of the need to turn to other sources like the capital  
16 markets to get the money it needs to prudently  
17 perform its utility obligations, should they get an  
18 analogous credit?

19 MS. SCARSELLA: You said prudently. You don't  
20 mean to make any legal conclusion from this witness?

21 MR. RIPPIE: No.

22 MS. SCARSELLA: Okay.

1           MR. RIPPIE: I mean to actually help Ms. Ebrey  
2 out.

3           Q     You don't need to tell me -- I'm not  
4 talking about a case where ComEd wastes the money,  
5 okay. ComEd is spending the money to perform its  
6 legitimate utility functions.

7           A     Shareholders provide money for ComEd to  
8 legitimately perform its utility functions, then I  
9 think your phrase was they should receive an  
10 analogous credit.

11          Q     Analogous credit.

12          A     Yes.

13          Q     Okay. Next topic, pension assets or  
14 pension contributions.

15                     Now, will you agree at the outset with  
16 me that in this case Exelon Corporation caused funds  
17 to flow to ComEd which permitted an approximately  
18 \$803 million contribution to the pension trust for  
19 ComEd pension liabilities?

20          A     Yes.

21          Q     I scrupulously avoided using the word asset  
22 because I know you don't like that word.

1                   You don't call into question the fact  
2   that that contribution was actually made?

3           A     No.

4           Q     \$803 million of real money actually flowed,  
5   right?

6           A     Yes.

7           Q     And Exelon could have spent that \$803  
8   million on something else; buying \$803 million of  
9   power plants, for example?

10          A     I don't know what Exelon could or could not  
11   have done with that money.

12          Q     And are you aware that in order to get that  
13   money, Exelon went to the capital markets and  
14   incurred obligations?

15          A     Yes.

16          Q     Now, if I can ask you to turn to lines 59  
17   through 61 of your direct. You testify there, and I  
18   quote, that a pension asset is recognized if net  
19   periodic pension costs is less than amounts the  
20   employer has contributed to the plan, period.  
21   Putting it another, comma, more simplistic way,  
22   comma, it is the amount by which a pension plan is

1     overfunded.

2                     Now, I want -- I'm now going to use  
3     asset in sort of the normal sense of asset, not in  
4     any technical accounting way.

5                     Do you deny that a real asset has been  
6     contributed if additional funds are placed in a  
7     pension trust account to pay future expenses of that  
8     trust fund regardless of whether or not the plan is  
9     overfunded?

10            A     Since the cash which was contributed is an  
11     asset, yes, I will agree that an asset was  
12     contributed to the plan.

13            Q     And you would expect, would you not, that  
14     if \$803 million of money is in that trust, more than  
15     was in before, the trust is going to earn more,  
16     right?

17            A     Right.

18            Q     In fact, even by rate case standards a  
19     whole lot more, right?

20            A     It should.

21            Q     And you have no reason to believe that  
22     ComEd's pension trust is performing in any way other



1     than it should in that respect, i.e., it's earning  
2     money?

3             A     My only problem with that statement is it's  
4     my understanding it's Exelon's pension trust that  
5     ComEd employees benefit from.

6             Q     With that correction, would you agree with  
7     me?

8             A     Yes.

9             Q     And would you also agree that because of  
10    the -- strike that, please -- that when a trust fund  
11    earns more on a going forward basis, the pension  
12    expense recognized by ComEd is less?

13            A     Not necessarily. There's a lot of other  
14    factors than just the earnings on the trust fund that  
15    would impact.

16            Q     Got it. I understand. We'll make it --  
17    we'll put my famous all other things being equal into  
18    the question.

19                   All other things being equal, if you  
20    pile \$803 million more into the trust fund, you would  
21    expect going forward pension expense to be less,  
22    right?

1           A     All other things being equal, right.

2           Q     Now, there was a little bit of a debate  
3     during the case on what that all other things being  
4     equal number was.

5                     But based on the evidence available to  
6     you now and isolating all other changes, just the  
7     change resulting from that \$803 million contribution,  
8     do you accept that the net change in pension -- test  
9     year pension expense is about \$30 million?

10          A     I would agree that the difference in the  
11     pension expense with the \$803 million contribution is  
12     \$30 million less than the pension expense would have  
13     been had the contribution not been made.

14          Q     Saved another page.

15                     And that reduction is reflected in the  
16     actuarial study, right?

17          A     Yes.

18          Q     Are you familiar with the -- I call it the  
19     puzzle piece chart.  It's Exhibit 35.4 that is  
20     attached to the surrebuttal testimony of -- I think I  
21     got the number wrong.  No.  Ms. Houtsma.

22                     Are you familiar with that?

1           A     Yes.

2           Q     I'm going to ask you about three questions  
3     about this little chart.  Maybe less than three  
4     questions.

5                     The 30 million that we just talked  
6     about is reflected in the difference between the \$12  
7     million number in the blue funding scenario and the  
8     \$42 million number in the red no funding scenario?

9           A     Right.

10          Q     I guess I only had one question.  Sorry.

11                    Now, staff's proposal in this case  
12     does not provide ComEd or ComEd's shareholders with  
13     the benefit of the \$30 million reduction, does it?

14          A     The \$30 million reduction is the reduction  
15     in pension expense and so --

16          Q     You've reduced ComEd's rates to reflect  
17     that \$30 million reduction, right?

18          A     The pension expense that I propose should  
19     be included in rates is the 11.7, I believe.

20          Q     And you have done that despite the fact  
21     that that \$30 million reduction is the result of the  
22     \$803 million contribution, right?

1           A     To determine the level of pension expense,  
2     I relied on the actuarial study for 2005.

3           Q     Which we've previously determined included  
4     that?

5           A     It does include the contribution, yes.

6           Q     And you make no claim anywhere that any  
7     portion of that \$803 million was ratepayer funds,  
8     right?

9           A     Right.

10          Q     Now, you also on, I believe, line 81  
11     roughly through 85 of your direct testimony argue for  
12     a disallowance of what we're calling the, quote,  
13     pension asset, unquote, on the grounds that it was  
14     discretionary?

15          A     What lines?

16          Q     I think it's 81 through 85.

17          A     Of my direct testimony?

18          Q     I thought it was. I have a little image of  
19     it here. Maybe it's your rebuttal. Give me a  
20     second.

21                MS. SCARSELLA: It's rebuttal.

22                MR. RIPPPIE: Yep. Wrong again.

1           Q     It's rebuttal. I apologize.

2           A     What was your question? I do have that  
3 section.

4           Q     I just asked you to read -- one of the  
5 grounds for the disallowance of the inclusion of that  
6 asset in rate base is because you said that  
7 contribution was discretionary?

8           A     Right.

9           Q     Now, is it your understanding that in  
10 general it is a criteria -- a criterion that must be  
11 met before an asset can be included in rate base that  
12 its creation was not discretionary?

13          A     No.

14          Q     In fact, the rate base in this case is  
15 filled with assets, the creation of which was  
16 discretionary, right?

17          A     Right.

18          Q     And as long as those assets are used and  
19 useful and acquired at a reasonable and prudent cost,  
20 again with your understanding of those terms, they go  
21 into rate base, right?

22          A     Right.

1           Q     I think my last pension question.

2                     You make a claim on approximately line  
3     191 of your rebuttal that recognizing this asset  
4     would increase the company's overall revenue  
5     requirement by 27.9 million, right?

6           A     Right.

7           Q     Your testimony that this contribution would  
8     hurt customers was based on the premise that the  
9     reduction in pension expense was less than 29.7  
10    million, right?

11          A     Right.

12          Q     If, in fact, the reduction is 30 million,  
13    customers are better off, right?

14          A     I think that the reduction that I'm talking  
15    about and the reduction that's on your chart are  
16    based on two different -- two different comparisons.

17          Q     Well, your comparison at lines 198 through  
18    203 simply compared the 27.9 million to the  
19    difference between two years' pension expense, right?  
20    That's a number that is 8.6 million?

21          A     Yes.

22          Q     And 8.6 million, that number includes all

1 the things that changed between those two years,  
2 right?

3 A That number does not include the  
4 contribution.

5 Q Right.

6 But it includes all of the other  
7 things that changed between the pension expense in  
8 '05 and the pension expense in '04?

9 A Right.

10 Q If we just isolate the effect of the  
11 contribution, if customers benefit by 30 million and  
12 it increases the revenue requirement by 27.9, they're  
13 better off, right?

14 A Once again, the 30 million is the  
15 difference between -- it's saying, okay, we've made  
16 the contribution and then we've removed it. And my  
17 8.6 million is the contribution never happened. The  
18 expense for '04 was 33.3 million. If the  
19 contribution was not even -- it never happened, it  
20 was never an issue, the company's pro forma  
21 adjustment would have only been an increase of 8.6  
22 million. That would be the only impact on the

1 revenue requirement if the contribution was not even  
2 contemplated in this proceeding.

3 (Whereupon, there was a  
4 change of reporter.)

5 BY MR. RIPPIE:

6 Q Isn't it true that the 8.6 million is  
7 simply the difference between the 41.9 million  
8 estimated '05 pension expense and the 33.3 million  
9 2004 actual expense?

10 A Yes.

11 Q And those numbers include all -- reflect  
12 all of the other things that may have changed with  
13 pension expense between 2004 and 2005; right?

14 A Yes.

15 Q They would, for example, reflect a change  
16 in the rate of which the trust fund is earning?

17 A Right.

18 Q A change in the actuarial assumptions, for  
19 example, the predicted lifetime of people taking  
20 pensions, the predicted retirement age, all other  
21 actuarial signs?

22 A Right.



1           Q     On to uncollectibles.

2                     As I understand your testimony, you  
3     claim that Commonwealth Edison's allowance for  
4     uncollectible expenses should be reduced based on --  
5     well, should be reduced. I have rebuttal, for  
6     example, Lines 466 to 518; is that right.

7           A     That's correct.

8           Q     The uncollectibles expense ratio which you  
9     suggest will be applied to charges for ComEd  
10    providing delivery services in this case?

11                    That's a terrible question. I'm going  
12    to rephrase that.

13                    If the uncollectible expense ratio you  
14    recommend is adopted by the Commission, it will be  
15    applied to revenues resulting from the provision of  
16    deliveries services.

17           A     Correct.

18           Q     It won't be applied to the provision of  
19    other services, right, not the subject of this case?

20           A     Right.

21           Q     Now, you base the derivation of your  
22    uncollectibles ratio on a multi-year average that

1 includes all classes of ComEd customers; right?

2 A Correct.

3 Q And, in fact, you've looked back five  
4 years; right?

5 A I believe that's correct.

6 Q And you use at simple average of five-year  
7 expense?

8 A Right.

9 Q And you agree that uncollectibles both  
10 total dollars and ratios can and do vary depending  
11 upon the class of the customer taking service?

12 A They can.

13 Q And, in fact, they do; right?

14 Companies data show they do; right.

15 A The information the company provided did  
16 have different uncollectible percentages for the  
17 different classes, yes.

18 Q And you found no reason to doubt the  
19 accuracy of that data?

20 A No.

21 Q And are you also aware of whether or not  
22 the rate of, I'll call it shopping by customers, vary

1 by class; that is, the rate at which customers take  
2 delivery only as opposed to button services?

3 A I agree with that.

4 Q There's more shopping in the large C & I  
5 than the small C & I and little to none in the  
6 residential class; right?

7 A I would agree with that.

8 Q Would you also agree that there are  
9 different drivers of uncollectibles for different  
10 classes of customers; that is, for residential  
11 customers it may be more influenced by the  
12 unemployment rate or the change in prices of other  
13 products such as natural gas; while in the business  
14 sector, it may be driven more by business cycles or  
15 particular companies falling on bad times?

16 MS. SCARSELLA: Before Ms. Ebrey answers, she's  
17 not our rate witness and she's only testifying as to  
18 her understanding how these rates -- you know, the.

19 MR. RIPPIE: It's my last question of that  
20 nature. If she doesn't know. . .

21 THE WITNESS: Can I get you to repeat that?  
22 It's late in the day.

1           MR. RIPPIE:   I know.

2                       Actually, you Honors, I've got  
3   about -- my guess is I'm right on time.  I probably  
4   have 20 minutes left.  If the witness needs to take a  
5   break, this is probably a decent time after this  
6   question.

7           THE WITNESS:  We can go on.

8   BY MR. RIPPIE:

9           Q     I'll repeat it.

10                      For different classes of customers,  
11   there are different drivers for the uncollectible  
12   rate.  For example, for residential customers, it may  
13   be influenced by the rate of unemployment or the  
14   prices of other utilities like natural gas.

15                      Whereas, for businesses, it may be  
16   determined by the business cycles or the bad fortunes  
17   of a particular large industrial customer.

18           A     I would agree with that.

19           Q     Now, you did not analyze, did you, whether  
20   or not your proposed five-year overall average was  
21   representative of uncollectible ratios by class?

22           A     I didn't do an analysis of my own.

1     However, in the company's response to one of my data  
2     requests, the overall percentage -- let me refer to  
3     that data request. It's Attachment A to my rebuttal  
4     testimony. And I don't -- this isn't confidential.

5                     The Attachment 1 of 1 to the company's  
6     response to my data request TEE 17.02 shows the  
7     various uncollectible rates by customer class. But  
8     it appears from this schedule on a whole the overall  
9     uncollectible rate is .72 percent, which is exactly  
10    the same percentage that I'm recommending.

11            Q     Would you be so kind as to give me the page  
12    number you're reciting one more time.

13            A     It's Attachment A to my rebuttal testimony.

14            Q     Got it. It's Page 2 of 2.

15            A     2 of 2.

16            Q     Of 17.02?

17            A     Right.

18            Q     Now before we get to 17.02, my question  
19    again is: You did not perform an analysis to  
20    ascertain whether your proposed five-year average for  
21    uncollectibles is representative of current levels by  
22    class; right?

1           A     Right.

2           Q     And on 17.02, that data includes  
3     uncollectibles for all classes regardless of their  
4     propensity to take delivery or the relative use of  
5     the delivery versus some other service; right?  It's  
6     just a simple sum in dollars?

7           A     This is what the company provided me when I  
8     asked for the work papers to support their  
9     uncollectibles.  I didn't go back and try to  
10    determine how these numbers were derived.

11          Q     Okay.  So the answer to my question is  
12    you're not sure one way other the other?

13          A     Right.

14          Q     If you'll indulge me with one question,  
15    please.  I think it's fair; but if you don't know,  
16    tell me.

17                   Do you know whether staff witness  
18    Hathhorn's adjustment to the uncollectibles ratio  
19    included in her gross revenue conversion factor  
20    computation is based on your work or whether she did  
21    some of her own.

22          A     I believe she used the .72 percent that I

1 recommended.

2 Q On to materials and supplies.

3 You propose \$1.609 million adjustment  
4 to materials and supplies inventory; right?

5 In your rebuttal. I think the cite is  
6 567 through 594.

7 A Yes. My adjustment on Schedule 13.7 is a  
8 decrease of 1.609 million.

9 Q And the basis of that adjustment is your  
10 decision to replace the test year and actual number  
11 with a 13-month average over the previous 13 months?

12 A Correct.

13 Q And the rationale for you replacing the  
14 test year end number with an average is that  
15 materials and supplies inventory varied; right?

16 Monthly.

17 A Over the -- I think it was three or four  
18 years of data that the company provided, yes.

19 Q And that would be the data that appeared on  
20 ComEd's Schedule B, dash, 8.1, which also I think  
21 appears in Jerry Hill's rebuttal Schedule 10; right?

22 A Right.

1           Q     Now over that period, sometimes the  
2     materials and supply inventory went up; sometimes it  
3     went down; and sometimes it remained steady for a few  
4     months; right?

5           A     Relatively steady.

6           Q     Do you believe that there were any base  
7     trends at work that would tend to drive the materials  
8     and supplies inventory up or down on a general basis  
9     over that four-year period?

10          A     I'm not aware of any.

11          Q     But you are aware that some materials and  
12     supplies will vary seasonally? For example, those  
13     are expended -- those that are expended during storm  
14     reduction efforts will tend to decline in the summer?

15          A     Not necessarily. The company may purchase  
16     more of that particular supply during the summer  
17     months when everyone can use more. You know, I don't  
18     know what their purchasing history would be. I just  
19     look at the balances at each month.

20          Q     So you don't know one way or another  
21     whether we could expect to see a systematic seasonal  
22     variation?



1           A     No.

2           Q     Now, if instead of taking the 13 months you  
3     had attempted to adjustment for the variation that  
4     you testified was not the product of any long-term  
5     trend by averaging the entire 48 months of available  
6     data, do you know what the result would have been?

7           A     No, I don't.

8           Q     If there was a systematic downward trend,  
9     you would expect the newest data to be the lowest;  
10    right?

11          A     Right.

12          Q     And for, in fact, if ComEd -- in fact, if  
13    there was such a trend, you would expect, if ComEd  
14    had based its revenue requirement contribution on  
15    the -- wait. It is getting late.

16                   If there was a systematic downward  
17    trend and ComEd picked the latest data, you would  
18    expect it to be the lowest data; right.

19          A     Right.

20          Q     And if there was a systematic upward trend,  
21    you would expect the longer -- a longer averaging  
22    period to produce a lower number; right?

1           A     Right.

2           Q     Would you agree that basic energy prices,  
3     for example, oil, natural gas, and gasoline impact  
4     the price of many of the materials that ComEd uses  
5     and maintains in inventory?

6           A     I don't know.

7           Q     On to environmental expenses, which I am  
8     happy to report is my last major topic.

9                     I think the same statement I made with  
10    respect to incentive comp applies here. I think I've  
11    constructed this in such a way that we will not need  
12    to tread into any confidential information. But if  
13    you feel that a full and fair answers requires you to  
14    go there, would you warn me in advance, please.

15          A     Yes.

16          Q     Now, you support ComEd's recovery of MGP  
17    costs through a Rider mechanism; right?

18          A     Right.

19          Q     And you, on the other hand, oppose recovery  
20    of non-MGP costs through a Rider mechanism, at least  
21    a Rider mechanism in this case?

22          A     Through the Rider that's been proposed by

1 the company in this case, yes.

2 Q Now, you recognize -- do you agree that  
3 ComEd is, in fact, currently and will continue to  
4 incur environmental remediation costs related to MGP  
5 sites?

6 A Yes.

7 Q MGP means Manufactured Gas Plants; right?

8 A Correct.

9 Q And do you also agree that ComEd is  
10 currently incurring and will continue to incur  
11 environmental remediation costs related to places  
12 other than MGP sites?

13 A The company did provide a budget, if you  
14 will, for non-MGP costs, yes.

15 Q But you wouldn't expect suddenly all the  
16 non-MGP land that the company touches to be free of  
17 any environmental contamination of any kind; would  
18 you? I mean, that would be unexpected; right?

19 A I do know that on the budget, and I'm not  
20 sure what document that was that was provided, that  
21 showed the budget going out to the year 2032, I  
22 believe, the non-MGP costs did stop in the year 2010,

1 2012.

2 Q You don't know whether that's because the  
3 company expects all land to become non-contaminated  
4 or something because that's the extent of the budget;  
5 right?

6 A Right. I don't know why it stopped at that  
7 point.

8 Q But to answer my question, you would be  
9 surprised if suddenly all the non-MGP land that the  
10 company dealt with would become free of all  
11 environmental remediation costs; right?

12 A I don't know.

13 Q Okay. Now you acknowledged that annual MGP  
14 costs vary and that's one of the reasons why Rider  
15 recovery is brokeraged; right?

16 A Right.

17 Q And you also agree that the costs are  
18 unpredictable in amount?

19 A I think the unpredictability is related to  
20 what the company is going to find when they get into  
21 the remediation. Once they know what's there I think  
22 they can predict with more reliance on what the cost

1 will be.

2 Q But we can't make that prediction until we  
3 learn what land we have to touch and whether or not  
4 it's contaminated right?

5 A For the MGP?

6 Q Yes.

7 A Yes.

8 Q Now, would you agree that non-MGP costs  
9 also vary significantly from year to year?

10 A I do not believe that the non-MGP costs  
11 vary as significantly as the MGP costs did.

12 Q Well, would you agree that the data  
13 provided by Mr. Hill show that within a ten-year  
14 period they vary from two-tenths of million to  
15 2.6 million?

16 I think it's Hill rebuttal  
17 Schedule 18.

18 A Yes.

19 Q And that is a 13-fold variation from the  
20 minimum to the maximum; right?

21 A Right.

22 Q Can you identify any other significant type

1 of discrete operating charge included in ComEd's  
2 operating expense that has varied by a factor of 13  
3 over a ten-year period and has not recovered through  
4 a Rider?

5 A I haven't performed an analysis like that  
6 of ComEd's expenses.

7 Q As you sit here today, you're not aware of  
8 any, though; are you?

9 A No, because I haven't done that type of  
10 analysis.

11 Q Now, would you agree with me that both MGP  
12 and non-MGP costs are related to state and federal  
13 environmental laws and regulations?

14 A Yes.

15 Q And ComEd must follow those laws and  
16 regulations; right?

17 A Right.

18 Q And ComEd has no control over their  
19 dictates; right?

20 A I don't know what ComEd can or cannot do to  
21 influence what those dictates may be.

22 Q Well, I certainly don't mean to imply that

1 ComEd or any party might not have options in working  
2 with regulatory agencies that to effect appropriate  
3 remediation. But you will agree with me at least  
4 that ComEd doesn't write the rules?

5 A I believe that ComEd can influence what  
6 those final rules are.

7 Q By participating in the political process?

8 A Right.

9 Q As can any other party?

10 A Right.

11 Q Putting aside how ComEd might participate  
12 in the political process, those rules are a product  
13 of legislation and rulemaking, not a product of ComEd  
14 voluntarily agreeing to undertake remediation?

15 A Right.

16 Q Okay. Now, do you have knowledge of any  
17 particular policy of insurance that might result in  
18 proceeds that ComEd could use to defray non-MGP  
19 costs?

20 A I have not done any review of ComEd's  
21 insurance policies, so I would have to say no.

22 Q At Line 637 through 49 of your rebuttal,

1     you make a claim that non-MGP costs result from  
2     ComEd's past generation activities not related to  
3     delivery. Did I sort of fairly summarize that?

4             A     Could you give me that summary again. I  
5     was trying to find the cite and I didn't --.

6             Q     Sure. Have you found the cite?

7             A     637 to 649?

8             Q     Yes.

9                     My summary was that, non-MGP costs  
10    result from ComEd's past generation activities that  
11    are not related to delivery.

12            A     It appeared to me that some of the non-MGP  
13    costs were related to their generation function and  
14    not delivery. I don't feel like I had enough  
15    information to know exactly what all those costs were  
16    related to.

17            Q     Do you know whether any of the MGP costs  
18    relate to property that was on sites formally  
19    occupied by generating stations?

20            A     As I sit here right now, no, I can't say.

21            Q     Now, do you agree that ComEd incurs non-MGP  
22    remediation costs related to land that it owns or



1 owned which it -- to which it brings regulated waste  
2 material for treatment of disposal?

3 Is that just one category.

4 A Yes.

5 Q And those activities in the main would  
6 relate to prior activities of ComEd or its  
7 predecessor companies; right?

8 A What do you mean those activities in the  
9 main?

10 Q Largely. Those activities largely relate  
11 to prior activities of ComEd or its predecessor  
12 companies.

13 A Once again, I haven't gotten into the  
14 details of the non-MGP sites enough to feel like I  
15 can answer that question.

16 Q Let's break the world up into two pieces.  
17 There's remediation related to activities in the past  
18 and remediation related to activities going forward.  
19 Okay?

20 Remediation related to activities  
21 going forward is remediation related to the  
22 activities of the delivery company; right.

1           A     Well, if I understand right, I would think  
2     that activities going forward, the company wouldn't  
3     create any environmental problems that there would  
4     need to be remediation of.

5           Q     Well, for example, we buy a new substation  
6     site and we go out there and we find that the land is  
7     contaminated, are remediation costs for that  
8     substation site will be related to our delivery  
9     activity, right, if wanting to build a substation?

10          A     Okay. I would agree with that.

11          Q     So because ComEd is a delivery company  
12     going forward, if we incurred new remediation  
13     obligations by virtue of our activities, those relate  
14     to delivery functions; right?

15          A     Right.

16          Q     Now, let's talk about the backward looking  
17     ones; okay?

18                     Can ComEd avoid the costs its incurred  
19     by actions in the past simply because it's a delivery  
20     company.

21          A     No, but I don't think I was saying ComEd  
22     could avoid those costs. My point was I don't know

1     that those costs are appropriately passed on to the  
2     delivery customers.

3           Q     If in the alternative they're put into base  
4     rates rather than a Rider, what customers pay?

5           A     I don't believe they should be put in base  
6     rates in this case.

7           Q     Where, if anywhere, do you believe they  
8     should be recovered?

9           A     I really don't know because, as I've said  
10    before, I don't know enough about those costs to know  
11    where they could be recovered. But from the  
12    information that I've looked at, it doesn't appear  
13    that there are related to delivery services.

14          Q     Other than --?

15          A     And that's my focus in this case, is what  
16    should be recovered from delivery service customers.

17          Q     Other than Rider ECR or the base rates at  
18    issue in this case, are you -- strike that.

19                   MGP costs aren't all related to  
20    ComEd's activities as the delivery company either;  
21    right.

22          A     Probably not.

1           MR. RIPPIE: Can I just have a minute, please.

2                       Thanks very much.

3           MS. SCARSELLA: One minute to let you know if

4 we need more time.

5                       Just a few minutes.

6                       (Whereupon, a brief

7                       recess was taken.)

8           JUDGE DOLAN: Back on the record.

9           MS. SCARSELLA: We have no redirect.

10          JUDGE DOLAN: Thanks, Ms. Ebrey. You're

11 excused.

12                       We are down to one witness.

13          MR. FOSCO: Your Honor, staff would call

14 Dr. Eric P. Schlaf and ask to be sworn in.

15          JUDGE DOLAN: Sir, would you please raise your

16 right hand.

17                       (Witness sworn.)

18          JUDGE DOLAN: All right. Proceed.

19

20

21

22

1                   ERIC P. SCHLAF, Ph.D.,  
2     having been called as a witness herein, after having  
3     been first duly sworn, was examined and testified as  
4     follows:

5                   DIRECT EXAMINATION

6                   BY

7                   MR. FOSCO:

8           Q     Would you please state your name for the  
9     record and spell your last name.

10          A     Eric P. Schlaf, S-c-h-l-a-f.

11          Q     Dr. Schlaf, did you cause rebuttal  
12     testimony to be prepared in this proceeding?

13          A     Yes, I did.

14          MR. FOSCO: Your Honor, pursuant to our  
15     shortened procedures, I will identify for the record  
16     Dr. Schlaf testimony. Dr. Schlaf filed rebuttal  
17     testimony that was marked as ICC Staff Exhibit  
18     No. 20.0 on February 27, 2006. It was filed on  
19     e-docket as Document No. 165106.

20          BY MR. FOSCO:

21          Q     Dr. Schlaf, is the testimony that I just  
22     described true and correct to the best of your

1 knowledge?

2 A Yes.

3 MR. FOSCO: Your Honor, with that, we would  
4 move for admission of ICC Staff Exhibit 20.0, and  
5 tender Mr. -- Dr. Schlaf for cross-examination.

6 JUDGE DOLAN: Any objection?

7 MR. ROONEY: None.

8 JUDGE DOLAN: All right. ICC Staff  
9 Exhibit 20.0 will be admitted into the record.

10 (Whereupon, ICC Staff  
11 Exhibit No. 20.0 was admitted  
12 into evidence.)

13 JUDGE DOLAN: Proceed.

14 Mr. Neilan, I believe.

15 MR. NEILAN: Sure. I believe I need to enter  
16 my appearance for the record. My name is Paul  
17 Neilan, N-e-i-l-a-n, of the law firm of Giordano &  
18 Neilan, Limited, 360 North Michigan Avenue, Chicago,  
19 here representing the Building Owners and Managers of  
20 Chicago -- Managers Association of Chicago.

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. NEILAN:

4 Q Good afternoon, Dr. Schlaf.

5 A Good afternoon.

6 Q I just have a few questions to ask you on  
7 your testimony concerning Rider resale.

8 A Okay.

9 Q If I can refer you to your rebuttal  
10 testimony Staff Exhibit 20.0, Page 15, Lines 343 to  
11 348.

12 A Okay.

13 Q Is it correct that you have two concerns  
14 about BOMA's proposed language for Rider resale?

15 A Yes.

16 Q And is it correct that the first concern  
17 that you have is that it's not apparent to you why a  
18 reseller building is not an ARES under the Illinois  
19 Public Utilities Act?

20 A Yes, that is a concern.

21 Q And is it correct that your second concern  
22 is that a reseller building can charge potentially

1     wildly different rates to tenants?

2           A     Yes.  With the provision that I mentioned  
3     that I assume for the second concern that the  
4     building owner -- a building owner could resell  
5     electricity without receiving an ARES certificate.

6           Q     Are you aware that Commonwealth Edison  
7     Company, the Illinois Industrial Energy Consumers,  
8     and the Coalition of Energy Suppliers all support  
9     BOMA's proposed Rider resale language as a way to  
10    address the reseller issue --?

11          A     Yes.

12          Q     -- post-2006?

13          A     Yes.  I'm sorry, yes.

14          Q     And isn't it true that you expression  
15    concerns about landlords charging potentially wildly  
16    different rates despite the agreement of ComEd, the  
17    IIEC and the coalition of electricity suppliers  
18    because BOMA's proposed language allows written lease  
19    language to govern a reseller's electricity charges?

20          A     I'm sorry, could you repeat that question,  
21    please.

22          Q     Sure.



1                   Isn't it true that you've expressed  
2   concerns about landlords charging potentially wildly  
3   different rates despite the agreement of ComEd, the  
4   IIEC and SEC because BOMA's proposed language allows  
5   written lease language to govern a reseller's  
6   electricity charges.

7           A     That is assuming that the amount is stated  
8   in the lease. Under the language as proposed, it is  
9   possible that two seemingly similar tenants could be  
10  charged different rates.

11          Q     Isn't it true that the support of the  
12  coalition of electricity suppliers for BOMA's  
13  proposed language indicates that other alternative  
14  retail indicates that Alternative Retail Electric  
15  Suppliers have no objection to reseller buildings not  
16  being certified as ARES?

17          MR. FOSCO: I'm going to object for  
18  foundational and calls for speculation. He's asking  
19  what it indicates about parties other than the  
20  coalition.

21          MR. GIORDANO: It refers to the coalitions.

22          MR. FOSCO: So you're asking, Pat, that --.

1           MR. NEILAN: That he was aware of CES support  
2   of BOMA's language and whether -- since SEC is a  
3   coalition of other Alternative Retail Electric  
4   Suppliers, if they support this language, does the  
5   witness interpret that as an indication that those  
6   other ARES have no objection of reseller buildings  
7   not being certified as ARES.

8           MR. FOSCO: I guess I'll still object as  
9   calling for speculation.

10          JUDGE DOLAN: I know. Overruled to the extent  
11   he can answer.

12          THE WITNESS: I'm aware that they have no  
13   objection to the language. I am not certain about  
14   what that might imply for their view of having, for  
15   example, potential competitors.

16   BY MR. NEILAN:

17          Q    Are you familiar with the direct testimony  
18   of Messrs. Brookover and Childress who appeared on  
19   behalf of the Building Owners Managers Association?

20          A    I read the testimony, although not  
21   recently.

22          Q    Did you read the text of the Rider resale

1 language in that direct testimony?

2 A Yes. I think that language. . .

3 Q I have it here.

4 A That language may have started with those  
5 witness, and what I'm looking at now is the ComEd  
6 comments on that language.

7 Q Right.

8 I think the language is the same, but  
9 do you agree that the Rider resale language that was  
10 proposed by BOMA does not expand the number of  
11 resellers; that is, all the people who would continue  
12 to be resellers must have continuously resold  
13 electricity since 1957.

14 A The tariff is somewhat confusing on that  
15 point, but that's my understanding of the intent.

16 Q Do you recall reading a statement by  
17 Messrs. Brookover and Childress in their direct  
18 testimony to the effect that the pressure to attract  
19 and keep tenants in a competitive real estate market  
20 will deter sellers from imposing excessive  
21 electricity charges?

22 I can show you the text in their

1 testimony if you care to see it.

2 A I don't recall seeing that, but I will  
3 accept that they mention that in their testimony.

4 Q Isn't it true that the commercial real  
5 estate market in the metropolitan Chicago area  
6 reflected a 20 percent vacancy rate in the 4th  
7 quarter of 2005?

8 A I have no way of knowing whether that's  
9 true or not.

10 Q Is it your position that the commercial  
11 real estate leasing market in Chicago is not  
12 competitive?

13 A I have no opinion on that.

14 Q Have you ever worked at property management  
15 firm or been in the business of leasing property as a  
16 landlord or lessor?

17 A No.

18 Q If you assume that a reseller landlord and  
19 a tenant have a lease or other written agreement that  
20 sets forth the terms on which the landlord will  
21 charge the tenant for electricity, do you agree that  
22 in such a lease the electricity can be expressed as a

1 charge in addition to rent?

2 A I'm sorry, the question is, could it be --.

3 Q Sure.

4 If you have a lease or other written  
5 agreement between a landlord and tenant --.

6 A Yes.

7 Q -- that addresses how the landlord will  
8 charge for electricity, that that electricity charge  
9 can be expressed as a charge in addition to rent --?

10 A Yes.

11 Q -- rather than, say, a rent inclusion?

12 A Sure.

13 Q Do you also agree that nothing in BOMA's  
14 proposed Rider resale language will prohibit or  
15 restrict a tenant of a reseller builder -- building  
16 from comparing the electricity price offered by a  
17 reseller building and the ComEd rate that the tenant  
18 would otherwise pay if it chose a non-reseller  
19 building?

20 A If the price were clearly stated in the  
21 agreement between the tenant and the building owner,  
22 an informed customer could compare that charge with

1 ComEd rates.

2 Q So to return to my prior request about the  
3 charge for electricity being expressed as a charge in  
4 addition to rent, then your answer would be yes; is  
5 that correct?

6 A Yes.

7 Q Isn't true that the same buildings that are  
8 currently reselling under Rider 12 have been  
9 reselling since 1997 without a certificate as an  
10 Alternative Retail Electric Supplier from the  
11 Illinois Commerce Commission which certificate has  
12 been required for retail electricity suppliers?

13 A Yes. But there's -- they're permitted to  
14 do that under an existing tariff, Rider 12, I  
15 believe.

16 Q So the answer is yes?

17 A Yes. Under the existing tariff.

18 MR. NEILAN: Just a moment.

19 BY MR. NEILAN:

20 Q In existing Rider 12, is there anything  
21 that requires reseller buildings to obtain ARES  
22 certification from the Commission?

1           A     I do not believe so.

2           Q     I'm sorry?

3           A     I do not believe so.

4           Q     Is that a no?

5           A     That is a no.

6           Q     Is there anything in Rider 12 that

7 addresses ARES certification of reseller buildings?

8           A     Not that I recall.

9           Q     Is that a no or a yes?

10          MR. FOSCO: I'm going to object. I mean, the

11 witness answered. He said he doesn't recall. I

12 think that's an answer.

13          JUDGE DOLAN: I think he's looking for yes or

14 no.

15 BY MR. NEILAN:

16          Q     It's a yes or no question?

17          A     Could you ask the question again.

18          MR. NEILAN: Permission to approach the

19 witness.

20          JUDGE DOLAN: Yes.

21 BY MR. NEILAN:

22          Q     Here's the text of Rider 12 to refresh your

1 recollection.

2 A I do not see a reference to ARES  
3 certification in Rider 12.

4 Q So the answer is no?

5 MR. GIORDANO: That's good enough.

6 BY MR. NEILAN:

7 Q And isn't true that the Commission has been  
8 licensing ARES since 1999, Alternative Retail  
9 Electric Suppliers since 1999?

10 A Maybe '99. It may be 1998, but certainly  
11 before the market opened in October 1999.

12 Q Isn't it also true that you have not  
13 proposed any alternative language for Rider resale?

14 A That's true.

15 Q And are you proposing that ComEd's tariffs  
16 be amended so that buildings that have been reselling  
17 electricity since 1957 not be allowed to continue to  
18 do so?

19 A No, I'm not.

20 Q Is it your position that the Illinois  
21 Commerce Commission has jurisdiction over landlord  
22 tenant disputes?



1           MR. FOSCO: I'm going to object. I think that  
2 it calls for a legal conclusion.

3           MR. NEILAN: Well, let me rephrase the  
4 question.

5           JUDGE DOLAN: I was going to say that.

6 BY MR. NEILAN:

7           Q Is it your position that with your --  
8 strike that.

9                       Is it your position that the Illinois  
10 Commerce Commission would now hear disputes between  
11 landlords and tenants on electricity charges.

12           A I mention on Page 16 of my testimony I  
13 accept the tariff as written, assuming that there's a  
14 determination that building owners do not need an  
15 ARES certificate.

16           MR. NEILAN: Just a moment, please.

17 BY MR. NEILAN:

18           Q Just to clarify, is it your position that  
19 you're accepting BOMA's proposed language if a  
20 reseller buildings do not need an ARES certification?

21           A Yes, that's my testimony.

22           MR. NEILAN: That's all I had. No further

1 questions.

2 JUDGE DOLAN: Thank you.

3 Does ComEd have any questions?

4 MS. POLEK-O'BRIEN: I think IIEC does.

5 CROSS-EXAMINATION

6 BY

7 MR. ROBERTSON:

8 Q I'm going to ask a couple of questions. He  
9 asked a lot of them that I might have asked, so if  
10 I'm similar, forgive or tell me.

11 My name is Ryan Robertson and I'm  
12 going to ask a few questions on behalf of IIEC  
13 concerning the Rider resell also.

14 And in your testimony you propose  
15 modification to the Rider resale language that shows  
16 up in the ComEd witnesses Alongi and McInernery  
17 rebuttal testimony; correct.

18 A Yes. Mr. Neilan asked me do I recommend  
19 any modification. And if I can -- I'm sorry, maybe I  
20 just --.

21 Q No. It's a deletion, not any kind of  
22 modification; correct?

1           A     Yes.

2                     If it's appropriate to answer with  
3     reference to the previous question, I do recommend  
4     modification or in the form of a delusion if the  
5     Commission determines that building owners do need an  
6     ARES certificate. Otherwise, I do not recommend any  
7     modification to it.

8           Q     Is it your understanding that a tenant is  
9     free to choose a business location to lease based on  
10    their approval of the terms and conditions of the  
11    lease agreement?

12          A     Yes.

13          Q     Okay. Is it your understanding the terms  
14    and conditions of a lease agreement are usually in  
15    moderate negotiation between the landlord and the  
16    tenant?

17          A     I would assume that they are.

18          MR. ROBERTSON: No further questions.

19          JUDGE DOLAN: Thank you.

20          MR. ROONEY: Your Honor, John Rooney on behalf  
21    of Commonwealth Edison Company. It's my understand  
22    that CUB who had 20 minutes no longer has that time;

1 is that correct.

2 JUDGE DOLAN: Yes. Go ahead.

3 CROSS-EXAMINATION

4 BY

5 MR. ROONEY:

6 Q Good afternoon, Dr. Schlaf?

7 A Good afternoon.

8 Q One question on Rider resale.

9 Just so I understand your position,  
10 it's your position -- is it your position that it's  
11 up to the Commission to determine whether or not an  
12 ARES certificate is appropriate under the scenario  
13 that encompasses Rider resell.

14 A Yes.

15 Q And it's staff position -- does staff have  
16 a position in terms of whether or not ARES  
17 certificate is appropriate?

18 A Personally, I don't understand why a  
19 building owner doesn't have -- doesn't need an ARES  
20 certificate. I am not certain whether that is the  
21 Staff legal opinion.

22 MR. ROONEY: Thank you. I have no further

1 questions.

2 JUDGE DOLAN: Any redirect?

3 MR. FOSCO: Give us just one minute.

4 JUDGE DOLAN: Okay.

5 (Whereupon, a brief

6 recess was taken.)

7 MR. FOSCO: No redirect.

8 JUDGE DOLAN: All right. Then I think we are

9 done today. Right, nothing else for today?

10 All right. We'll be entered and

11 continued to tomorrow morning at 9:00 a.m., and we'll

12 be back in the main hearing room.

13 (Whereupon, further proceedings

14 in the above-entitled matter

15 were continued to March 29, 2006,

16 at 9:00 a.m.)

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